Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

JAMES G. GILLES,
Petitioner,

vs.

BRYAN K. BLANCHARD, ET AL.,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

For the purpose of sharing his religious beliefs, Petitioner James G. Gilles visited Vincennes University and initiated a discussion in an open and accessible part of the campus resembling a sidewalk and public park. This effort was soon thwarted by the university officials, however, who barred the expression as "solicitation." In consideration of this matter, Seventh Circuit acknowledges that the subject Solicitation Policy is vague and supplies unbridled discretion to university officials, but, in analogizing the sidewalk and park-like area on campus to private property, upholds the restriction nevertheless.

The following questions are presented:

1. Is an open area on a public university campus that resembles a sidewalk and public park and is compatible with speech, considered public fora or private property for speech purposes?

2. Is it ever appropriate to give officials unbridled discretion to regulate speech on public property, even in a nonpublic forum?

PARTIES TO THE PROCEEDING

Petitioner James G. Gilles brought suit and was a Plaintiff-Appellant before Seventh Circuit. The following are respondents and were Defendants-Appellees before Seventh Circuit: Bryan K. Blanchard, in his official capacity of President of Vincennes University, and John Livers, individually and in his official capacity of Dean of Students for Vincennes University.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. Rule 29.6, Petitioner James G. Gilles states that he is not a subsidiary or an affiliate of a publicly owned corporation.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vi

DECISIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS 1

STATEMENT OF THE CASE 2

A. Factual Background 2

B. Proceedings Below 6

REASONS FOR GRANTING THE WRIT 6

I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT AMONG CIRCUIT COURTS OVER THE APPLICATION OF FORUM ANALYSIS TO OPEN AREAS ON PUBLIC UNIVERSITY CAMPUSES. 7

A. Seventh Circuit's Refusal to Evaluate Objective Characteristics of Property Conflicts with Other Circuit Courts and Decisions of this Court 10

1. Seventh and Fourth Circuits gloss over objective characteristics 11

2. Fifth, Eighth, Ninth, Tenth and D.C. circuits emphasize objective characteristics 13

B. Seventh Circuit's Decision to Jettison Forum Analysis and Apply Private Property Rules to Public University Property Conflicts with Decisions of this Court 16

II. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT AMONG CIRCUIT COURTS OVER THE APPLICATION OF THE UNBRIDLED DISCRETION DOCTRINE IN NONPUBLIC FORA 20

A. The Seventh Circuit Decision Conflicts with Other Circuits over Application of Unbridled Discretion Doctrine in Nonpublic Fora. 21

1. Federal, First and Seventh Circuits permit unbridled discretion in nonpublic fora 21

2. Fourth, Eighth, Tenth and Eleventh circuits prohibit unbridled discretion in nonpublic fora 23

B. Seventh Circuit Decision Conflicts with Decisions of this Court over Application of Unbridled Discretion Doctrine in Nonpublic Fora 25

1. Policy that allows unbridled discretion should be facially invalidated 26

2. Unbridled discretion doctrine applies in nonpublic fora 27

3. Officials should not be trusted to apply unwritten, vague policies 27

CONCLUSION 29

TABLE OF AUTHORITIES

CASES

ACLU of Nevada v. City of Las Vegas
333 F.3d 1092 (9th Cir. 2003) 13

Adderly v. State of Florida
385 U.S. 39 (1966) 18

Alabama Student Party v. Student Gov't Ass'n
867 F.2d 1344 (11th Cir. 1989)..... 15

American Civil Liberties Union v. Mote
423 F.3d 438 (4th Cir. 2005)..... 10

Arkansas Educ. Television Comm'n v. Forbes
523 U.S. 666 (1998) 7, 15

Atlanta Journal & Constitution v. City of Atlanta Dep't of Aviation
322 F.3d 1298 (11th Cir. 2003)..... 25

Board of Airport Commissioners v. Jews for Jesus, Inc.
482 U.S. 569 (1987) 27

Bowman v. White
444 F.3d 967 (8th Cir. 2006) 10, 12, 15, 16

Child Evangelism Fellowship of Md. v. Montgomery County Pub. Sch.
457 F.3d 376 (4th Cir. 2006)..... 24

Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five
470 F.3d 1062 (4th Cir. 2006)..... 24, 29

City of Chicago v. Morales
527 U.S. 41 (1999) 20

Commonwealth v. Davis
162 Mass. 510 (Mass. 1895) 20

Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.
473 U.S. 788 (1985) 12, 15, 17, 27

Dallas Ass'n. of Cmty. Organizations for Reform Now v. Dallas Cty. Hosp. Dist.
670 F.2d 629 (5th Cir. 1982) 12

First Unitarian Church v. Salt Lake City
308 F.3d 1114 (10th Cir. 2002) 9, 13, 14

Forsyth County v. Nationalist Movement
505 U.S. 123 (1992) 19, 20, 21, 26

Frisby v. Schultz
487 U.S. 474 (1988) 8, 15

Gilles v. Blanchard
477 F.3d 466 (7th Cir. 2007) ..... *passim*

Grayned v. City of Rockford
408 U.S. 104 (1972) 12

Greer v. Spock
424 U.S. 828 (1976) 8, 9

Griffin v. Secretary of Veterans Affairs
288 F.3d 1309 (Fed. Cir. 2002) 23

Grutter v. Bollinger
539 U.S. 306 (2003) 6

Hague v. CIO
307 U.S. 496 (1939) 8, 15, 20

Hays County Guardian v. Supple
969 F.2d 111 (5th Cir. 1992) 10, 15

Healy v. James
408 U.S. 169 (1972) 6, 7

International Soc'y for Krishna Consciousness v. Lee
505 U.S. 672 (1992) 14, 15

Justice for All v. Faulkner
410 F.3d 760 (5th Cir. 2005) 12

Lakeview Associates, Ltd. v. Maes
907 P.2d 580 (Colo. 1995) 19

Lakewood v. Plain Dealer Pub. Co.
486 U.S. 750 (1988) ..... *passim*

Lederman v. United States
291 F.3d 36 (D.C. Cir. 2002) 13

Lewis v. Wilson
253 F.3d 1077 (8th Cir. 2001) 25

Lloyd Corp. v. Tanner
407 U.S. 551 (1972) 19

Niemotko v. Maryland
340 U.S. 268 (1951) 20

Paulsen v. County of Nassau
925 F.2d 65 (2d Cir. 1991) 8, 9

Perry Educ. Ass'n v. Perry Local Educators' Ass'n
460 U.S. 37 (1983) 7, 15, 27

Ridley v. Massachusetts Bay Transp. Auth.
390 F.3d 65 (1st Cir. 2004) 23

Rosenberger v. Rector & Visitors of Univ. of Va.
515 U.S. 819 (1995) 7, 19, 20

Saia v. New York
334 U.S. 558 (1948) 20

Sammons v. American Automobile Association
912 P.2d 1103 (Wyo. 1996) 18, 19

Schenck v. Pro-Choice Network
519 U.S. 357 (1997) 8, 15

Shelton v. Tucker
364 U.S. 479 (1960) 7

Shuttlesworth v. City of Birmingham
394 U.S. 147 (1969) 21

Spartacus Youth League v. Bd. of Trustees
502 F. Supp. 789 (N.D. Ill. 1980) 15

Students Against Apartheid Coalition v. O'Neil
660 F. Supp. 333 (W.D. Va. 1987) 15

Summum v. Callaghan
130 F.3d 906 (10th Cir. 1997) 25

United States v. Grace
461 U.S. 171 (1983) 8, 15

United States v. Kokinda
497 U.S. 720 (1990) 9, 10, 15

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.
455 U.S. 489 (1982) 20

Widmar v. Vincent
454 U.S. 263 (1981) 12

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. I 1

U.S. Const. Amend. XIV, cl. 1 ..... 1, 2

STATUTES & RULES

Sup. Ct. Rule 29.6 ii

28 U.S.C. § 1254(1) 1

OTHER AUTHORITIES

Marie A. Failinger, *New Wine, New Bottles: Private Property Metaphors and Public Forum Speech*, 71 ST. JOHN'S L. REV. 217 (1997) 9, 10

Steven G. Gey, *Reopening the Public Forum from Sidewalks to Cyberspace*, 58 OHIO ST. L.J. 1535 (1998)..... 8

Nathan W. Kellum, *If It Looks Like a Duck...Traditional Public Forum Status of Open Areas on Public University Campuses*, 33 HASTINGS CONST. L. Q. 1 (2005)..... 16

Rodney Smolla, *Academic Freedom, Hate Speech and the Idea of a University*, 53 LAW & CONTEMP. PROBS. 195 (1990)..... 12

DECISIONS BELOW

The district court's ruling granting summary judgment for defendants is reprinted at Appendix ("App.") 14a-21a. The decision of Seventh Circuit affirming the district court's order of summary judgment is reported as *Gilles v. Blanchard*, 477 F.3d 466 (7th Cir. 2007) and is reprinted at App. 1a-13a. The decision of the Seventh Circuit denying rehearing and rehearing *en banc* is reprinted at App. 22a.

JURISDICTION

The United States Court of Appeals for Seventh Circuit entered its judgment in this case on February 14, 2007. The Court of Appeals denied petitioner's petition for rehearing and rehearing *en banc* on March 12, 2007. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The first section of the Fourteenth Amendment to the United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

> State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Factual Background

Vincennes University ("VU") is a public state university located in Vincennes, Indiana. VU's campus is open to the public at large. App. 29a. There are no fences preventing access and no security entrances where identification is required. App. 28a. Streets, sidewalks, and open areas are located throughout the campus for public use. App. 106a; 109a-115a; 50a-51a. In the center of the campus is an area known as the "library lawn area." App. 106a. This area consists of a main sidewalk, abutting grassy knolls, with connecting sidewalks that run through the campus and into the community of Vincennes. App. 106a, 109a-113a.

Outside groups and individuals have traditionally come onto VU's campus for expressive purposes. App. 62a. One such outside group, a religious group known as the Gideons, visits VU annually and passes out Bibles in open areas on campus. App. 61a-64a, 69a-70a. Historically, the Gideons have enjoyed free reign on the VU campus for their expressive activity, including uninhibited access to the library lawn area. App. 69a-70a. Another group, John and Ellen Duncan ("Duncans"), came to VU in August of 1998 to speak on the campus. App. 117a. At that time, the Duncans went to the open area of the library lawn and

engaged in religious discourse for over four hours. App. 117a, 119a. The Duncans attracted a large number of students (about 70) who gathered to hear the Duncans preach. App. 117a-19a. And the Duncans' expressive activity did not go unnoticed by VU. Two police officers came to the library lawn and observed the Duncans' expression, but no VU official ever attempted to restrict the Duncans' speech. App. 118a.

James G. Gilles ("Gilles") is a professing Christian who travels to public universities throughout the country and imparts a religious message to college students. App. 105a. He typically speaks on topics of faith and encourages dialogue about his faith and other moral issues of the day. App. 105a-06a. Gilles does not attempt to solicit. App. 107a. He makes no effort to sell any services or products, nor does he seek to gain anything for himself or any organization. *Id.* He does not encourage anyone to join any organization. *Id.* Nor does he try to entice anyone to action. *Id.* Gilles conveys his message because of a firm religious conviction to "share the gospel," or, in other words, to communicate the good news about Jesus Christ. *Id.* He does not wish for anyone to act, but to believe. *Id.* To achieve his goals, Gilles engages in public speaking, individual conversations with students, and leafleting. App. 108a.

In 2001, Gilles visited the campus of VU and spoke without interruption in the library lawn area. App. 106a. The following year, on August 29, 2002, Gilles came back to VU and attempted to speak in the same library lawn area, as he did in 2001. *Id.* But, on this visit, Harold Hensley, Chief of Police at VU, prohibited Gilles from speaking, and advised Gilles to fill out a solicitation request with Dean of Students John Livers ("Livers"). *Id.* Livers is the VU official responsible for reviewing and approving solicitation requests. App. 28a, 38a, 43a, 126a.

Livers instructed Gilles that he must register his speech in accordance with VU's "solicitation" policy. App. 106a. Livers enforced VU's "solicitation" policy against Gilles, concluding that Gilles' speech was "solicitation" because he thought Gilles would entice someone to action, even though Livers did not know what Gilles was going to say that day. App. 55a, 106a, 122a, 128a. VU's "sales and/or solicitation" policy reads in part as follows:

> Vincennes University also requires prior approval for all solicitations on campus by any person or organization. Again, the Dean of Students will approve the date and time of the solicitation. He will also notify the appropriate University personnel regarding the campus location for the solicitor. The designated area on campus for solicitation is the brick walkway directly in front of the Beckes Student Union. Solicitation is the act of seeking to obtain by persuasion; to entice a person to action; or the recruiting of possible sales.

App. 128a, 137a.

Because Livers declared Gilles's speech to be "solicitation," Gilles was forced to speak on the brick walkway in front of Beckes Student Union rather than the library lawn area. App. 48a, 56a, 106a, 122a. The designated brick walkway is adjacent to a public street at a three-way intersection with another street. App. 46a, 106a-107a, 114a, 115a. This location is not suited for the type of expressive activity envisioned by Gilles. App. 106a-07a. There are very few students in the vicinity and the vehicular traffic makes the background noise very loud and difficult to talk over. *Id.* Gilles attempted to speak on the "brick

walkway" but found the effort futile. App. 106a. Gilles left the area and has not returned to VU or attempted to speak on VU's campus for fear of arrest. App. 107a.

The VU Policy defines "solicitation" as "the act of seeking to obtain by persuasion; to entice a person to action; or the recruiting of possible sales." App. 128a, 137a. VU officials interpret this phrase to mean speech that persuades someone to do something or speech that persuades someone to give something. App. 45a-46a.

In application, Gilles is forced to speak at the "brick walkway" whether his speech actually falls within the policy's definition of "solicitation" or not. App. 43a, 54a, 56a. But other speakers, whose speech falls within the policy's definition of "solicitation," need not speak on the "brick walkway." App. 30a-35a, 50a-51a, 60a-61a, 78a-80a.

VU permitted the Indiana National Guard to recruit in front of Morris Hall in April of 2004. App. 80a. VU further granted the Women of Essence a chance to sell candy anywhere on campus – including the lawn of the library – in April of 2004. App. 82a-83a. VU allowed Black Male Initiative to hand out flyers for homecoming anywhere on campus, including the library lawn area, in November of 2003. App. 87a-88a. And VU permitted Sarah Nicholas and Jena Grosser, for the Kernan and Davis for Indiana Campaign, to register and encourage students to vote outside the library in September of 2004. App. 90a-91a.

During 2003, VU hosted numerous events and expressive activities. App. 72a-80a, 129a, 137a-39a. These events attempt to entice persons to action, but VU did not require any of the outside individuals or entities to fill out a solicitation request or speak in the brick walkway. App. 79a. Under the present system, an individual can come onto the

VU campus and engage in solicitation without having to fill out a solicitation request, as long as it is approved by Livers.

B. Proceedings Below

To vindicate his right to speak, Gilles filed his Verified Complaint for Declaratory and Injunctive Relief and Damages on April 16, 2004, along with a Motion for Preliminary Injunction. The district court denied Gilles' Motion for Preliminary Injunction by Order dated July 29, 2004. After discovery, the parties filed cross-motions for summary judgment on July 18, 2005. On January 16, 2006, the district court entered an Order and Judgment denying Gilles' Motion for Summary Judgment and granting Defendants' Motion for Summary Judgment, dismissing all claims brought by Gilles. App. 14a-21a. Following this decision, Gilles filed his Notice of Appeal to Seventh Circuit Court of Appeals on February 1, 2006.

On February 14, 2007, Seventh Circuit issued its opinion affirming the district court's order of summary judgment in favor of Defendants and against Gilles. App. 1a-13a. Then, on February 28, 2007, petitioner filed a Petition for Rehearing and a Petition for Rehearing En Banc. On March 12, 2007, both petitions were denied. App 22a.

REASONS FOR GRANTING THE WRIT

As this Court has frequently noted, free speech plays a vitally important role in the university setting and deserves the utmost protection. *See, e.g., Grutter v. Bollinger,* 539 U.S. 306, 329 (2003) ("We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition"); *Healy v. James*, 408 U.S.

169, 180 (1972) ("[S]tate colleges and universities are not enclaves immune from the sweep of the First Amendment"); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) ("The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools"). But the Seventh Circuit's dim view of forum analysis threatens this important role; as does its refusal to acknowledge the dangers of unbridled discretion in this context. Undermining the First Amendment on the public university campus, the *Gilles v. Blanchard* ruling contradicts decisions of other circuits and this Court. Thus, grant of this Writ of Certiorari is justified. This Court's involvement is needed to resolve the conflict and to preserve space for "creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 836 (1995).

I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT AMONG CIRCUIT COURTS OVER THE APPLICATION OF FORUM ANALYSIS TO OPEN AREAS ON PUBLIC UNIVERSITY CAMPUSES

For assessing the propriety of speech regulations on public property, this Court uses a methodology known as "forum analysis." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44-46, 49 n. 9 (1983). Pursuant to which, the property or "forum" is first classified into one of three categories: traditional public fora, designated public fora, or nonpublic fora. *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998). Then, in judging the restriction, the standard of scrutiny attached to the forum classification is applied. *Id.* at 677-78.

In this matter, Seventh Circuit upholds a restriction on expression taking place on a sidewalk and park-like venue on

a public university campus. *Gilles*, 477 F.3d at 468-69. Streets, sidewalks, and parks have long been considered "prototypical" examples of public fora. *Schenck v. Pro-Choice Network*, 519 U.S. 357, 377 (1997). No "particularized inquiry" is required for such areas since they are considered "quintessential" fora for expression. *Frisby v. Schultz*, 487 U.S. 474, 481 (1988). *See generally* Steven G. Gey, *Reopening the Public Forum from Sidewalks to Cyberspace*, 58 OHIO ST. L.J. 1535, 1538-39 (1998) ("[E]very culture must have venues in which citizens can confront each other's ideas and ways of thinking about the world. Without such a place, a pluralistic culture inevitably becomes Balkanized....") As this Court observed early on in formulating forum analysis, "*[w]herever* the title of streets and parks *may rest*, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939) (emphasis supplied). Consequently, "streets, sidewalks and parks are considered, *without more*, to be 'public forums.'" *United States v. Grace*, 461 U.S. 171, 177 (1983) (emphasis supplied).[1]

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[1] This begs a preeminent question in this case: What is meant by "more?" Despite this Court not expressly commenting on the topic, the indication is that the "more" to be shown is incompatibility with expression. Since streets, sidewalks, and parks necessarily share the objective characteristics of openness and accessibility, they are traditional public fora unless it can be demonstrated that expression interferes with their intended use. In isolated situations, streets and sidewalks can be found to be incompatible with speech, and thus nonpublic fora, such as those located on military installations. *See Greer v. Spock*, 424 U.S. 828, 838 (1976) ("[I]t is...the business of a military installation like Fort Dix to train soldiers, not to provide a public forum"). In the normal course of things, this cannot be shown, as streets, sidewalks, parks and similar venues are naturally compatible with expression. *See Paulsen v. County of Nassau*, 925 F.2d 65, 70 (2nd Cir. 1991) (judging area to be public fora,

Forum status of sidewalks and parks situated on a public university has never been specifically addressed by this Court. This Court did consider an analogous situation, that being, the government's authority as a proprietor to regulate speech on a sidewalk, in *United States v. Kokinda*, 497 U.S. 720 (1990) (plurality). Regrettably, that case did not produce a majority opinion[2] and has engendered some confusion over how to apply forum analysis to areas that appear to be traditional public fora. *See* Marie A. Failinger, *New Wine, New Bottles: Private Property Metaphors and Public Forum Speech*, 71 ST. JOHN'S L. REV. 217, 250 (1997) ("From the *Kokinda* twist to the public forum doctrine, a conundrum arises with respect to judicial values

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distinguished *Greer* on basis that expressive activity did not threaten same type of governmental function as that implicated on military base).

Seventh Circuit, however, believes compatibility with expression is of no import. In refusing to strike down the speech restriction imposed on Gilles and anyone else depicted as a "solicitor" on the sidewalk and park-like areas at VU, the appellate court offers that VU "wouldn't have to prove that allowing them in would disrupt its educational mission." *Gilles*, 477 F.3d at 470.

[2] In a fractured decision, a plurality, consisting of Chief Justice Rehnquist and Justices O'Connor, Scalia, and White, held that the way leading to the entrance of a post office is a nonpublic forum and a law precluding volunteers from soliciting contributions and distributing political information to be a reasonable regulation. *Kokinda*, 497 U.S. at 730, 737. Contrariwise, Justices Brennan, Marshall, Stevens, and Blackmun understood the sidewalk to be a traditional public forum and the law not narrowly tailored to serve a significant governmental interest. *Id.* at 740, 755 (Brennan, J. dissenting). In a decisive concurrence, Justice Kennedy indicated that he thought the path to be a traditional public forum, but went on to uphold the law as a valid time, place and manner restriction. *Id.* at 737-39 (Kennedy, J. concurring). *See First Unitarian Church v. Salt Lake City*, 308 F.3d 1114, 1125 n. 6 (10th Cir. 2002) ("We cite Justice Kennedy's concurrence [in *Kokinda*] as controlling Supreme Court precedent because his concurrence provided the fifth vote on the narrowest grounds").

of clarity and predictability"). With only mixed signals from *Kokinda* to guide them, some circuit courts have taken liberty to construct their own rules for forum status of areas resembling sidewalks and parks. Not surprisingly, then, circuit courts disagree on how to analyze such areas on public universities and whether such property is public or nonpublic fora. *Compare Bowman v. White*, 444 F.3d 967, 977-78 (8th Cir. 2006); *Hays County Guardian v. Supple*, 969 F.2d 111, 118 (5th Cir. 1992) with *American Civil Liberties Union v. Mote*, 423 F.3d 438, 444 (4th Cir. 2005).

With the *Gilles* decision, Seventh Circuit has now lent its unique voice to the debate, advancing the position that all public university property is to be viewed as private university property.[3] In adopting this approach, and refusing to analyze the objective characteristics of the property at issue, Seventh Circuit stands in need of correction.

A. Seventh Circuit's Refusal to Evaluate Objective Characteristics of Property Conflicts with Other Circuit Courts and Decisions of this Court

There is widespread confusion and conflict among circuit courts over how to apply forum analysis where governmental entity functions as a proprietor and this is perhaps most evident in the context of university property. Ninth, Tenth and D.C. circuits look to the objective characteristics of property in making the assessment and presume that property looking and acting like parks, sidewalks, and streets classify

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[3] In its own novel way, Seventh Circuit infuses economics in the constitutional analysis and essentially proposes that First Amendment be dictated by market forces. The appellate court draws the unlikely inference that the Constitution does not fully apply to public university property "[s]ince public and private universities compete with each other...." *Gilles*, 477 F.3d at 470.

as public fora. Adhering to this objective analysis, Fifth and Eighth circuits consider sidewalks and open, park-like areas on public universities to be public fora. On the other hand, Fourth Circuit ignores objective characteristics of open areas on university grounds and brand such property as nonpublic fora as a matter of course. Similar to Fourth Circuit, Seventh Circuit in *Gilles* rejects the objective approach, and this aversion to objective factors cements a clear circuit split in want of resolution.

1. Seventh and Fourth circuits gloss over objective characteristics

For Seventh and Fourth circuits, the objective characteristics of property play little to no role in forum analysis. Instead, these circuits rely on the intent of the government to determine forum status. This is exemplified in *Gilles*, where Seventh Circuit gives university officials the same power to regulate speech in areas compatible with speech as in areas incompatible with speech. The property's physical or otherwise objective characteristics are irrelevant to Seventh Circuit:

> No matter how wonderfully suited the library lawn is to religious and other advocacy, Vincennes University could if it wanted bar access to the lawn to any outsider who wanted to use it for any purpose, just as it could bar outsiders from its classrooms, libraries, dining halls, and dormitories.

Gilles, 477 F.3d at 470. Even though an open lawn is remarkably different than a library or a classroom, the *Gilles*

court treats all areas on campus the same.[4] The sole fact that VU asserts that all campus property is nonpublic fora is sufficient for Seventh Circuit.[5] Government intent is but one factor in forum analysis. *Cornelius*, 473 U.S. at 803. Government intent is not the sole or even most significant factor. *See Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972) ("The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."). Hence, Seventh Circuit erred in elevating VU's legal argument and allowing it to override VU's actual actions, policies, and the nature of

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[4] By refusing to consider the particular access sought by the speaker, Seventh Circuit broke further with the precedent of this Court and sister circuits. *See Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 801 (1985) ("in defining the forum, we have focused on the access sought by the speaker"). Gilles attempts to speak on the sidewalk and park-like lawn area, not a quiet library, classroom, or, for that matter, anywhere else on the campus. Governmentally-owned land that contains different types of property - like a public university campus - cannot be treated as a singular type of forum. *Bowman*, 444 F.3d at 976-77; *Justice for All v. Faulkner*, 410 F.3d 760, 766 (5th Cir. 2005); *Dallas Ass'n. of Cmty. Organizations for Reform Now v. Dallas Cty. Hosp. Dist.*, 670 F.2d 629, 631 (5th Cir. 1982). *See also* Rodney Smolla, *Academic Freedom, Hate Speech and the Idea of a University*, 53 LAW & CONTEMP. PROBS. 195, 218 (1990) ("The soundest view is to treat campus not as one unified forum, but as subdivided into multiple forums to which different free speech standards apply").

[5] Ironically, in way of support, Seventh Circuit quotes *Widmar v. Vincent*, 454 U.S. 263, 269 n. 5 (1981), noting the absence of any requirement "that a campus must make all of its facilities equally available to students and nonstudents alike, or that a university must grant free access to all of its grounds or buildings." *Gilles*, 477 F.3d at 470. Of course, Gilles does not seek access to "all" of VU's facilities, just a select and small portion of the open grounds on campus. In *Widmar*, by implication with the word "all," this Court seemingly recognizes Gilles' right to have access to at least some public university property. *See Bowman*, 444 F.3d at 987 (Bye, J. concurring) ("The Court [in *Widmar*] in no way suggests, and perhaps with its use of the term 'all' implies the contrary, all streets, sidewalks and parks on a public university are non-traditional public fora").

the forum.

In its forum analysis, to the extent any was undertaken, the *Gilles* court passes over objective characteristics like the traditional use of the property, the objective use and purposes of the space, and the property's physical characteristics and location. Expressly rejecting the reasoning of the Eighth Circuit, and siding with the Fourth Circuit, the *Gilles* court declares campus sidewalk and park-like area to be nonpublic fora just because VU said so. *Gilles*, 477 F.3d at 470-71. Thus, Seventh Circuit and Fourth Circuit approach forum status of university property in similar fashion. They allow governmental intentions - even those intentions first espoused in litigation - to trump objective characteristics of the property at issue. This refusal to give due weight to objective characteristics of public property runs afoul of analysis employed by other circuit courts.

2. Fifth, Eighth, Ninth, Tenth, and D.C. circuits emphasize objective characteristics

In contrast to Seventh and Fourth Circuits, other circuits tend to analyze the objective characteristics of property when conducting forum analysis. *E.g. ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1099 (9th Cir. 2003) (analyzed objective nature of publicly-owned downtown pedestrian mall); *First Unitarian Church*, 308 F.3d at 1125-26 (evaluated physical characteristics of pedestrian throughway on church property); *Lederman v. United States*, 291 F.3d 36, 41-44 (D.C. Cir. 2002) (considered objective factors of sidewalk in front of Capitol building). Areas functioning like sidewalks, streets and parks are presumed to be public fora because their physical characteristics allow for speech with minimal disruption of government interests. *See*

International Soc'y for Krishna Consciousness v. Lee, 505 U.S. 672, 699-700 (1992) (Kennedy, J. concurring in judgment) (urged study of "objective, physical characteristics" for determining forum status).

Such principles were employed in *First Unitarian Church, supra,* where Tenth Circuit deemed church property to be a traditional public forum because the property possessed the objective characteristics of a sidewalk and pedestrian mall. 308 F.3d at 1125. Tenth Circuit discerned physical characteristics to be more important than governmental intentions. *Id.* at 1124-25. As a result, the appellate court held the property to be public fora despite the express governmental intent to the contrary. *Id.* at 1125. For judging forum status, the following factors where adopted from Justice Kennedy's concurrence in *Lee*:

> If the objective, physical characteristics of the property at issue and the actual public access and uses that have been permitted by the government indicate that expressive activity would be appropriate and compatible with those uses, the property is a public forum. The most important considerations in this analysis are whether the property shares physical similarities with more traditional public forums, whether the government has permitted or acquiesced in broad public access to the property, and whether the expressive activity would tend to interfere in a significant way with the uses to which the government has as a factual matter dedicated the property.

Id. quoting *Lee*, 505 U.S. at 698-99 (Kennedy, J. concurring in judgment).

The significance of objective characteristics has also been recognized in the university environment. In *Bowman v. White*, *supra,* Eighth Circuit labeled sidewalks and open, park-like areas on a university campus as designated public fora. 444 F.3d at 978-80. In reaching this conclusion, Eighth Circuit analyzed the traditional use of the property, the objective use and purposes of the space, the government intent and policy with respect to the property, and the property's physical characteristics and location. *Id.* A sister appellate court has likewise relied on such characteristics to find public fora on university campus. *See Supple*, *supra*, 969 F.2d at 117 (finding certain outdoor areas of university to be designated public forum). Other jurists rely also on these objective characteristics as the basis to find certain university property to be traditional public fora. *See Bowman,* 444 F.3d at 988 (Bye, J. concurring) ("If we are to protect any space as a traditional public forum for expressive purposes, a public university street, sidewalk or park must be such a space"); *Alabama Student Party v. Student Gov't Ass'n*, 867 F.2d 1344, 1354 n.6 (11th Cir. 1989) (Tjoflat, J., dissenting) ("A campus of a major state university is a microcosm of the community....[S]treets, sidewalks and park-like areas...are best described as traditional public fora...."); *Spartacus Youth League v. Bd. of Trustees.*, 502 F. Supp. 789, 799 (N.D. Ill. 1980) ("This Court believes that Circle Center and campus walkways are 'public forums'"); *Students Against Apartheid Coalition v. O'Neil*, 660 F. Supp. 333, 338 (W.D. Va. 1987) (noting similarities between open campus lawn and traditional public forum like municipal park, examined regulation on campus lawn as attempt to regulate speech in public place).[6]

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[6] Precedents emanating from this Court strongly suggest that some university property can be considered traditional public fora. A consistent reading of this Court's pertinent decisions on forum analysis, *Hague, Perry, Cornelius, Grace, Frisby, Kokinda, Lee, Schenck* and *Forbes*, points to a traditional public forum being defined as parcel of

The conflict between Eighth Circuit (*Bowman*) and Seventh Circuit (*Gilles*) is particularly striking. The *Bowman* court examines a host of objective factors to assess forum status, but none of these factors are considered by the *Gilles* court. In the *Bowman* decision, the appellate court downplays the role of government intent in forum analysis; in contrast, the *Gilles* court relies exclusively on an espoused governmental intention. And consequently, while the *Bowman* court finds sidewalk and park-like area on university property to be public fora, the *Gilles* court finds similarly situated university property to be nonpublic fora. Doubting the "soundness" of the *Bowman* ruling, the Seventh Circuit deliberately takes a divergent path. *Gilles,* 477 F.3d at 471.

As bore out in these two appellate decisions, as well as others, clarity is needed to resolve this ever-present conflict over methodology. Amidst this confusion and sparring over classification, the right to free speech on public university campuses hangs in the balance.

B. Seventh Circuit's Decision to Jettison Forum Analysis and Apply Private Property Rules to Public University Property Conflicts With Decisions of this Court

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government property that allows for open access and is compatible with expression. *See supra* note 1. Accordingly, university property that meets this definition, like the open lawn area and sidewalk at VU, constitutes traditional public fora. *See generally* Nathan W. Kellum, *If It Looks Like a Duck...Traditional Public Forum Status of Open Areas on Public University Campuses*, 33 HASTINGS CONST. L. Q. 1 (2005) (highlights Supreme Court and appellate court rulings that support recognition of streets, sidewalks and park-like areas on public university campus as traditional public fora).

Per directive of this Court, forum analysis is the proper means for judging speech restrictions on government property:

> [T]he Court has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. Accordingly, the extent to which the Government can control access depends on the nature of the relevant forum.

Cornelius, 473 U.S. at 800. In the face of this precedent, the *Gilles* court refuses to "pitch [its] analysis on the distinction that Supreme Court has drawn between 'traditional public forums,' 'designated public forums,' and 'nonpublic forums.'" *Gilles*, 477 F.3d at 473. According to Seventh Circuit, forum analysis amounts to nothing more than a "complex scheme" that has turned "the search for sensible results into a classification game." *Id.* at 474. But while Seventh Circuit is certainly free to criticize the doctrine, they are not at liberty to cast it aside. Forum analysis is not a tool of leisure.

In lieu of applying forum analysis, Seventh Circuit rests its decision on private property rules. Rejecting the claims of Gilles, Seventh Circuit reasons that school officials should be able to control all university property, just like

private property owners control their own property. *Gilles*, 477 F.3d at 472-73.[7]

Still, the *Gilles* court had to confront the actual policy used by VU to regulate Gilles' speech. Under that policy, "solicitors" are required to register with VU prior to speaking on campus. There is no other written policy regulating speech at VU, and thus, VU must necessarily label Gilles' speech as "solicitation" to regulate it. And, as the *Gilles* court recognizes, VU's policy cannot bear such interpretation, at least, not without it being unconstitutionally vague. *Id.* at 471-72. But rather than invalidate the policy, the *Gilles* court invokes an unwritten "norm" derived from private property law.

This "norm" supposedly allows strangers to visit VU but prohibits obtrusive use of the property. *Id.* at 472. Equipped with this new-found norm, VU officials are now enabled to ban Gilles from campus, similar to how a private property owner could ban Gilles from private property:

> This [rule against "unobtrusive" land use] has long been a norm, and not just a practice: strangers to the university community are not to use the library lawn for purposes other than those unobtrusive, implicitly authorized uses of land (generally as a shortcut or other pathway) that distinguish a licensee from a trespasser. *E.g., Sammons v. American*

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[7] This Court has said: "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Adderly v. State of Florida*, 385 U.S. 39, 47 (1966). In accordance with this principle, the State university can appropriately exclude expression in certain areas on campus, but, as this Court makes plain, only in those places where expression would disrupt the "use to which the property is lawfully dedicated." *See supra* n. 1.

Automobile Association, 912 P.2d 1103, 1105 (Wyo. 1996); *Lakeview Associates, Ltd. v. Maes*, 907 P.2d 580, 581-82 (Colo. 1995).

Id.

Seventh Circuit defers to this so-called "norm" despite the utter lack of any factual evidence supporting its existence.[8] In lieu of evidence, the *Gilles* court relies on some common law notion of a "norm" emanating from the two cited state cases dealing with private property. Aside from this reliance being misplaced, it bears emphasis that Gilles seeks to speak on public property. Though some government property may appear to be like private property in many respects, the rules for private property cannot be applied to public property, irrespective of characteristics, location and use. *See Lloyd Corp. v. Tanner*, 407 U.S. 551, 563 (1972) (rejecting similarity between publicly and privately owned streets for First Amendment purposes). This assumption that a public university is just like "any other landowner" belies commonly understood notions of the forum doctrine, as well as this Court's appreciation of "the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Rosenberger,*

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[8] VU did not even contend that a "norm" like this exists. As Seventh Circuit acknowledges, VU regulates Gilles under its Solicitation Policy, not under some abstract "norm." *Gilles*, 477 F.3d at 472 ("The policy as interpreted by the defendants to cover preaching the Gospel is hopelessly vague....") This fact is highly significant because a defendant's interpretation of its own policy should be the authoritative interpretation in considering a facial challenge. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131 (1992) ("In evaluating respondent's facial challenge, we must consider the county's authoritative constructions of the ordinance, including its own implementation and interpretation of it."). Notwithstanding, Seventh Circuit disregards VU's express indications and interpretation regarding its own policy.

515 U.S. at 835.

Indeed, Seventh Circuit's use of private property law reeks of similar logic once advanced by Justice Holmes, who said: "For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house." *Commonwealth v. Davis*, 162 Mass. 510, 511 (Mass. 1895). Needless to state, this logic has long been rejected by this Court, and for good reason. *E.g. Niemotko v. Maryland*, 340 U.S. 268, 279 (1951); *Saia v. New York*, 334 U.S. 558, 561 n. 2 (1948); *Hague*, 307 U.S. at 514-16. Undeterred, Seventh Circuit resurrects this erroneous reasoning, and, in doing so, strikes at the very core of forum analysis: the need to reserve some public property for robust dialogue.

II. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT AMONG CIRCUIT COURTS OVER THE APPLICATION OF THE UNBRIDLED DISCRETION DOCTRINE IN NONPUBLIC FORA

The First Amendment forbids laws that give public officials unbounded discretion to regulate speech. *Forsyth County*, 505 U.S. at 133. A law is unconstitutionally vague if it (1) fails to give fair warning as to the prohibited conduct or (2) allows for arbitrary and discriminatory enforcement in the absence of adequate standards. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). This test is especially stringent in consideration of free speech because vague language and undue discretion allows officials to discriminate against certain viewpoints. *Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757, 763-64 (1988); *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). To avoid such

discrimination, this Court requires regulations on speech to contain narrow, objective, and definite standards to guide the decision-maker. *Forsyth County*, 505 U.S. at 130; *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). A regulation that grants unbridled discretion in controlling protected expression is unconstitutional *per se*. *Lakewood*, 486 U.S. at 757.

This Court has yet to consider application of this unbridled discretion doctrine in a nonpublic forum. Given the silence, circuits have derived two conflicting interpretations: Federal, First, and the Seventh circuits do not apply the unbridled discretion doctrine in nonpublic fora, while Fourth, Eighth, Tenth, and Eleventh do. This latter position is supported by the decisions of this Court. The unbridled discretion doctrine is utilized to prevent self-censorship and viewpoint discrimination. And this rationale applies in all fora, including nonpublic fora. Therefore, this Court should grant review to resolve the conflict among the circuit courts and to provide guidance to government officials and speakers acting in areas depicted as nonpublic fora.

A. Seventh Circuit Decision Conflicts With Other Circuits over Application of Unbridled Discretion Doctrine in Nonpublic Fora

A clear circuit split has arisen over the unbridled discretion doctrine and its application within nonpublic fora.

1. Federal, First, and Seventh circuits permit unbridled discretion in nonpublic fora

Three circuit courts, Federal and First, and now, Seventh in *Gilles*, refuse to invalidate policies granting unbridled

discretion in nonpublic fora.[9] In the *Gilles* case, Seventh Circuit explicitly recognizes the existence of unfettered discretion with the challenged policy. And, in the words of the *Gilles* court, the vague policy and its application to Gilles "brings him to the verge of victory." *Gilles*, 477 F.3d at 472. Yet, the appellate court still upholds the policy because Gilles had not proven - to the court's satisfaction - that other parties had accessed the forum at issue:

> The policy as interpreted by the defendants to cover preaching the Gospel is hopelessly vague and thus a supple weapon for excluding from the university lawn those outsiders whose message the university disapproves of. But [Gilles] falls just short of prevailing because he has failed to show that any uninvited outsider has ever been permitted to use the lawn for any purpose.

Id.[10]

On this logic, the doctrine of unfettered discretion is essentially nullified. By demanding proof of a pattern of discrimination before a vague policy can be struck down as unconstitutional, the appellate court overlooks that vagueness and unbridled discretion automatically invalidate a policy regulating speech. This, of course, is due to the very

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[9] As shown, Seventh Circuit's error in *Gilles* was not that it classified sidewalk and open lawn area on campus as nonpublic fora, as much as it failed to apply any forum analysis at all. Nevertheless, by default, Seventh Circuit scrutinizes the restriction as though the property constitutes nonpublic fora.

[10] As an aside, Seventh Circuit is mistaken in saying Gilles failed to show that any uninvited outsider used the property. The record shows that "outside" individuals and groups have historically been permitted to use the property for expressive purposes. App. 60a-63a, 68a-69a, 117a-19a.

prospect of viewpoint discrimination. *Lakewood*, 486 U.S. at 755-57. Once the government opens a nonpublic forum via written policy, that policy is not permitted to be vague, even if no actual speaker has ever accessed the forum. *Id.*

Federal Circuit committed similar error in *Griffin v. Secretary of Veterans Affairs*. 288 F.3d 1309 (Fed. Cir. 2002). There, in *Griffin*, a veteran facially challenged a regulation that forbade "the display of any placards, banners, or foreign flags on [public] property unless approved by the head of the facility or designee." *Id.* at 1315. The *Griffin* court admitted that the policy set "no explicit limit on the discretion of [government] officials to permit exceptions, and the government has given us little or no reason why this grant of discretion differs from those that have been struck down as unconstitutional in the past." *Id.* at 1323. Notwithstanding, Federal Circuit still upheld the policy just because it applied to speech in a nonpublic forum. *Id. Accord Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 93 (1st Cir. 2004) (relying on *Griffin* to reject vagueness challenge in nonpublic forum).

In all these cases, Federal, First, and Seventh circuits confront a regulation that is admittedly vague and engenders unbridled discretion. In lieu of invalidating these policies on their face, however, these courts demand further proof of viewpoint discrimination. In this respect, these circuits contradict decisions of other circuit courts.

2. Fourth, Eighth, Tenth and Eleventh circuits prohibit unbridled discretion in nonpublic fora

In contrast with Federal, First, and Seventh circuits, sister circuits stringently apply the unbridled discretion doctrine in nonpublic fora. Such stringent application was on display

when Fourth Circuit invalidated a policy regulating literature distribution at public elementary schools. *Child Evangelism Fellowship of Md. v. Montgomery County Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006). That policy permitted school officials to exercise broad discretion over flyer distribution. *Id.* at 380.

Fourth Circuit declined to classify the public school as a particular forum because the unbridled discretion invalidated the policy irrespective of whether the forum classified as public or nonpublic:

> [T]he dangers posed by unbridled discretion--particularly the ability to hide unconstitutional viewpoint discrimination--are just as present in other forums. Thus, there is broad agreement that, even in limited public and nonpublic forums, investing governmental officials with boundless discretion over access to the forum violates the First Amendment.

Id. at 386.

For this reason, Fourth Circuit did not demand any proof regarding actual access to the forum or the presence of past viewpoint discrimination. The mere possibility of viewpoint discrimination (a possibility created by unbridled discretion) was deemed ample to invalidate the policy. *Id.* at 388.

The *Montgomery County* decision is no aberration. Fourth Circuit reaffirmed the same rationale in *Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five* and again announced that the unbridled discretion doctrine applies in nonpublic fora. 470 F.3d 1062, 1068-69 (4th Cir. 2006). Indeed, Fourth, Eighth, Tenth, and Eleventh circuits all agree that the unbridled discretion doctrine should apply

in nonpublic fora and that the mere presence of unbridled discretion is enough to make a policy unconstitutional. *E.g. Atlanta Journal & Constitution v. City of Atlanta Dep't of Aviation*, 322 F.3d 1298, 1310-11 (11th Cir. 2003) (sale of newspapers at airport); *Lewis v. Wilson*, 253 F.3d 1077, 1079-80 (8th Cir. 2001) (vanity license plates); *Summum v. Callaghan*, 130 F.3d 906, 919-20 (10th Cir. 1997) (monolith on courthouse lawn). The *Gilles* decision - demanding a pattern of abuse - runs squarely against this consensus, creating an obvious circuit split over the application of the unbridled discretion doctrine, particularly, within nonpublic fora.

B. Seventh Circuit Decision Conflicts with Decisions of this Court over Application of Unbridled Discretion Doctrine in Nonpublic Fora

Though this Court has never applied the unbridled discretion doctrine in nonpublic fora, this Court has articulated the rationale for doing so. In *Lakewood v. Plain Dealer Publ'g. Co., supra,* this Court explained that unbridled discretion is problematic for two distinct reasons. 486 U.S. at 757. First, unbridled discretion forces parties to censor their own speech to avoid punishment, and second, it allows officials to hide viewpoint discrimination behind vague guidelines. *Id.* These rationales entail three conclusions: 1) a regulation allowing unbridled discretion should be facially invalidated 2) the unbridled discretion doctrine applies in nonpublic fora and 3) courts should not assume the good faith of officials to apply a vague policy.

In *Gilles*, Seventh Circuit disregards this Court's sound basis for the unbridled discretion doctrine. As a result, the *Gilles* court failed to facially invalidate a vague law, failed to apply the unbridled discretion doctrine in a nonpublic forum,

and failed to question the good faith of government officials applying a vague law. On all these counts, Seventh Circuit causes a conflict with this Court.

1. Policy that allows unbridled discretion should be facially invalidated

When officials possess unbridled discretion to control access to a forum, speakers will often censor their own expression in order to pander to officials' opinion and gain access to that forum. Therefore, a government official can effectively chill speech by simply retaining unbridled discretion, even if that official never actually uses that discretion to silence speakers. To counteract this chill effect, this Court invalidates vague laws on their face. A plaintiff need not prove that the law has been enforced inconsistently or that the law has been enforced at all: "[T]he mere existence of the licensor's unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused." *Lakewood*, 486 U.S. at 757.

This conclusion stands in contrast with Seventh Circuit decision in *Gilles* because Seventh Circuit forces Gilles to prove a pattern of abuse before invalidating the policy. But as *Lakewood* makes clear, vagueness and unbridled discretion are enough to facially invalidate a law.

In fact, unbridled discretion is problematic precisely because it chills speech and permits viewpoint discrimination in the future. The constitutionality of a policy depends "not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything... preventing him from doing so." *Forsyth County*, 505 U.S. at 133 n. 10.

2. Unbridled discretion doctrine applies in nonpublic fora

Unbridled discretion empowers officials to pick and choose which viewpoints to allow. With unbridled discretion, government officials can restrict speech for any reason and can hide viewpoint discrimination behind the veil of vague language. *Lakewood*, 486 U.S. at 758.

This connection between unbridled discretion and viewpoint discrimination is important because viewpoint discrimination is forbidden in all forums, even nonpublic forums. *Cornelius*, 473 U.S. at 806; *Perry*, 460 U.S. at 46. If unbridled discretion is forbidden because it permits viewpoint discretion, then it necessarily follows that unbridled discretion should be forbidden in nonpublic forums. This reasoning is also supported by the connection between vagueness and unbridled discretion; vague language often gives government officials the discretion to suppress certain viewpoints. *See e.g. Board of Airport Commissioners v. Jews for Jesus, Inc.*, 482 U.S. 569, 576 (1987) ("the opportunity for abuse, especially where a statute has received a virtually open-ended interpretation, is self-evident."). As a result, vague laws that grant unbridled discretion can violate the First Amendment as well as the due process clause of the Fourteenth Amendment. *Lakewood*, 486 U.S. at 769-72. This link between vagueness and unbridled discretion is critical because this Court also denounces vague laws in nonpublic fora. *Jews for Jesus,* 482 U.S. at 576. When read together, this Court's decisions regarding vagueness, viewpoint discrimination, and unbridled discretion extend the unbridled discretion doctrine to nonpublic fora.

3. Officials should not be trusted to apply unwritten, vague policies

At its core, the unbridled discretion doctrine demands the existence of written policies or well-established practices to limit government discretion to regulate speech. A court cannot rely on the supposed good faith of a government official to apply a vague, unwritten policy.

Other than VU's Solicitation Policy, there is no other written policy regulating speech on the campus. To regulate Gilles, VU promulgated and enforced its Solicitation Policy. In light of the vagueness attached to it, the appellate court, in turn, relies on this unwritten "norm" as a supplement to VU's written policy, so as to remedy the vagueness problem.

This is, in essence, the same defense proffered by the municipal defendants in *Lakewood*. When their policy was challenged as vague, the *Lakewood* defendants argued that unwritten terms and procedures supplemented and limited the breadth of their written policy. This Court quickly disposed of that argument:

> The city asks us to presume that the mayor will deny a permit application only for reasons related to the health, safety, or welfare of Lakewood citizens, and that additional terms and conditions will be imposed only for similar reasons. This presumes the mayor will act in good faith and adhere to standards absent from the ordinance's face. But this is the very presumption that the doctrine forbidding unbridled discretion disallows. The doctrine requires that the limits the city claims are implicit in its law be made explicit by textual incorporation, binding judicial or administrative construction, or well-

> established practice. This Court will not write nonbinding limits into a silent state statute.

Lakewood, 486 U.S. at 770 (citations omitted). *See also Anderson Sch. Dist. Five*, 470 F.3d at 1074 (noting that First Amendment rights could not "be made to depend solely upon the good faith of state officials"). The *Gilles* court does exactly what the *Lakewood* defendants attempted to do: justify a vague written policy by incorporating unwritten terms and by assuming good faith on the part of officials to comply with those unwritten rules.

There is no reason to take such a leap of faith here. If anything, the importance of First Amendment freedoms requires courts to assume the opposite. Unwritten rules cannot remedy vaguely written laws, government officials cannot be assumed to act in good faith when regulating speech, and courts cannot re-write written policies to comply with the First Amendment. In all these respects, the *Gilles* court strayed from this Court's precedent.

CONCLUSION

For the forgoing reasons, this Court should grant this Petition and reverse the judgment of Seventh Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals,
Seventh Circuit.
James G. GILLES, Plaintiff-Appellant,
v.
BRYAN K. BLANCHARD, John Livers,
Defendants-Appellees.
No. 06-01441.

Argued October 31, 2006.
Decided February 14, 2007.

Before POSNER, WOOD, and EVANS, Circuit Judges.

POSNER, Circuit Judge.

Vincennes University, the oldest institution of higher education in Indiana (founded in 1806 by future President William Henry Harrison before Indiana was admitted to statehood)—and a public institution since its inception—has its main, and only residential, campus in the town of Vincennes (population 18,000) in southwestern Indiana. About 5,000 students, all undergraduate, are enrolled full time at the Vincennes campus.

James Gilles ("Brother Jim") (home page http://www.thecampusministry.org/, visited Feb. 2, 2007) is a traveling [2 No. 06-1441] evangelist—the latest in a line of Christian itinerant preachers stretching back to Saint Paul and prominent in Methodism in nineteenth-century America. Born near Vincennes, Gilles gives the following account of his salvation. As a result of Satan's machinations, he devoted himself as a youth to drugs, sex, booze, and rock and roll. At a rock and roll concert at which the well-known Van Halen band performed, singer David Lee Roth shouted to the

crowd: "Not even God can save your soul at a Van Halen concert!" Gilles saw the light, called on God to save him and thus refute Roth, and was saved. The message he preaches, as summarized in his own words, is "Sinner friend, I have good news for you, you also can experience righteousness, peace and joy in the Holy Ghost if you would only forsake your sinful, selfish ways and turn to the The Lord And Savior Jesus Christ." Neither the record nor Brother Jim's home page indicates that he is affiliated with any religious organization, although in another case in which he was turned away by a university he is identified as a member of the Free Pentecostal Holiness Churches, *Gilles v. Torgersen*, 71 F.3d 497, 499 (4th Cir. 1995) (dismissed without a decision on the merits), presumably a reference to the Pentecostal Holiness Church, a Protestant denomination with Methodist antecedents. None of this, of course, is important. There is no reason to doubt either his bona fides or that the content of his religious advocacy is protected by the First Amendment. The question is whether the protection extends to a particular site on the university campus. Vincennes University and Brother Jim first intersected in 2001, when he entered the campus uninvited and walked to a lawn in the middle of the campus, next to the university library. He preached from the lawn and a [No. 06-1441 3] disturbance ensued, the nature of which is not revealed by the record, although the university's dean of students stated in his deposition that "when I went there, he [Brother Jim] was in the grassy area in front of the library. He had had—he was speaking to a number of students there. There was some—a disturbance, and at one point the campus police felt like he was in danger. And they asked him to leave, and he did." From another case we learn that "when preaching, [Brother Jim] uses a confrontational style that includes calling people in the crowd names, such as whoremonger and drunkard, once the individuals have answered certain questions that he poses to them. He has been arrested on numerous occasions

in the past." *Gilles v. Torgersen*, No. 92-0933, 1995 U.S. Dist. LEXIS 8502, at *2 (W.D. Va. Jan. 31, 1995), vacated for want of standing, 71 F.3d 497 (4th Cir. 1995). Brother Jim denied that his preaching at Vincennes in 2001 had caused a disturbance, and in the procedural posture of the case we must credit his denial.

In reaction to the incident—whatever exactly it was—the university for the first time adopted a formal policy governing access to the campus by outsiders to the university community. Entitled "Sales and/or Solicitation Policy," the policy requires prior approval by the dean of students of all sales on campus. In addition, and more to the point of this case, the policy also requires the dean's prior approval of all "solicitations" on campus. Solicitation is defined as "the act of seeking to obtain by persuasion; to entice a person to action; or the recruiting of possible sales." Solicitors, if approved, are limited to soliciting in the brick walkway directly in front of the student union.

Here is a satellite photo of the campus, showing the library lawn and the walkway.

[No. 06-1441 5]

Brother Jim returned to the campus the following year, proceeded to the lawn, was turned back and told he could preach only on the brick walkway. He tried to preach there, but the fact that the walkway is adjacent to a street makes it a noisy locale for a speech. Unable to attract an audience, he broke off and left, and filed this suit against the responsible university officials, contending that the solicitation policy infringes his right of free speech. The district court granted summary judgment for the defendants.

Brother Jim argues that since the lawn is public property and is suitable for speechifying, he can no more be

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forbidden to preach there than he could be forbidden to preach in a public park. That is incorrect. The Justice Department in Washington has a large auditorium, with a stage, and so would be a suitable venue for a theatrical production. But the First Amendment does not require the department to make the auditorium available for that purpose even when it is not being used for departmental business. Public property is property, and the law of trespass protects public property, as it protects private property, from uninvited guests. "[T]he Government, 'no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated,' *Greer v. Spock,* 424 U.S. 828, 836 (1976)." *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788, 800 (1985). Since public and private universities compete with each other, courts hesitate to impose in the name of the Constitution extravagant burdens on public universities that private universities do not bear. Cf. *Chicago Acorn v. Metropolitan Pier & Exposition Authority*, 150 F.3d 695, 704 (7th Cir. 1998).

[6 No. 06-1441]

It is not as if requiring a public university to throw open its grounds to itinerant speakers would merely redress the advantage that a public university has over a private one because it has taxpayer support; the requirement would deny the university control over its facilities. The courts reject the proposition "that a campus must make all of its facilities equally available to students and nonstudents alike, or that a university must grant free access to all of its grounds or buildings." *Widmar v. Vincent,* 454 U.S. 263, 268 n. 5 (1981). "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Adderley v. Florida*, 385 U.S. 39, 47 (1966); see also *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114, 129 (1981).

No matter how wonderfully suited the library lawn is to religious and other advocacy, Vincennes University could if it wanted bar access to the lawn to any outsider who wanted to use it for any purpose, just as it could bar outsiders from its classrooms, libraries, dining halls, and dormitories. It wouldn't have to prove that allowing them in would disrupt its educational mission. See *American Civil Liberties Union v. Mote*, 423 F.3d 438, 444 (4th Cir. 2005). "[G]overnment may draw permissible statusbased distinctions among different classes of speakers in order to preserve the purpose of the forum, even when the proposed uses by those inside the permitted class of speakers and those outside the permitted class of speakers are quite similar." *Goulart v. Meadows*, 345 F.3d 239, 254 (4th Cir. 2003).

What is true is that a university that decided to permit its open spaces to be used by some outsiders could not exclude others just because it disapproved of their mes [No. 06-1441 7] sage. E.g., *Rosenberger v. Rector & Visitors of University of Virginia,* 515 U.S. 819, 828-30 (1995). But it could use neutral criteria for access, such as that an outsider must be invited to speak on campus by a faculty member or a student group. *American Civil Liberties Union v. Mote*, *supra*, 423 F.3d at 444. The difference between invited and uninvited visitors is fundamental to a system of property rights. "The fact that other civilian speakers and entertainers had sometimes been invited to appear at Fort Dix did not of itself serve to convert Fort Dix into a public forum or to confer upon political candidates a First or Fifth Amendment right to conduct their campaigns there. The decision of the military authorities that a civilian lecture on drug abuse, a religious service by a visiting preacher at the base chapel, or a rock musical concert would be supportive of the military mission of Fort Dix surely did not leave the authorities powerless thereafter to prevent any civilian from entering Fort Dix to speak on any subject whatever." *Greer v. Spock*, 424 U.S. 828, 838 n. 10 (1976). Coming closer to this case,

we said in *Piarowski v. Illinois Community College District 515*, 759 F.2d 625, 629 (7th Cir. 1985), that the fact "that Piarowski sometimes invited artists from outside the college to exhibit their work in the [college's art] gallery no more made the gallery a public forum than a teacher's inviting a guest lecturer to his classroom would make the classroom a public forum."

Brother Jim places great weight on *Bowman v. White*, 444 F.3d 967 (8th Cir. 2006), which held that a public university that allowed anyone to use its outdoor spaces for public speaking could not limit that use by outsiders to five days (per outsider) per semester. The limit did not discriminate against particular viewpoints. It merely gave preference to insiders, which strikes us as [8 No. 06-1441] eminently reasonable and leads us to doubt the soundness of the decision, for in *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, *supra*, 473 U.S. at 806, the Supreme Court said that "control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral"; cf. *United States v. Kokinda*, 497 U.S. 720, 730 (1990) (plurality opinion). Our case is in any event distinguishable from *Bowman* because Vincennes University has placed the lawn completely off limits to uninvited outsiders, and if it can't do that without violating the Constitution, public universities cannot control their property. Confining solicitations to the walkway in front of the student union is entirely appropriate because most of the solicitations are of students, and where better to encounter a steady stream of them than outside the student union? Letting solicitors into the middle of the campus would disrupt the campus atmosphere.

But here is the rub. In responding to Brother Jim's lawn preaching in 2001 by promulgating a policy limited to sales and solicitations, the university could be thought to have thrown open the lawn to all outsiders who were *not*

selling or soliciting. Brother Jim argues forcefully that he does neither, and he asks us to infer (or allow a jury to infer) that the application of the policy to him was therefore pretextual and discriminatory. Not that the university necessarily disapproves of his message. It may just fear a disturbance. But yielding to a "heckler's veto" infringes a speaker's free speech. *Church of American Knights of Ku Klux Klan v. City of Gary*, 334 F.3d 676, 680-81 (7th Cir. 2003), and cases cited there.

[No. 06-1441 9]

Brother Jim certainly is not selling anything. And he does not solicit or receive contributions or seek to "entice" members of his audiences to "action." He tries merely to save their souls and make them happy. Of course, as he explains, salvation requires them to give up, as he gave up, drugs, sex (Brother Jim means fornication and adultery— he is not a Shaker), booze, and rock and roll. But that is enticement to inaction rather than to action. It is remote from what is ordinarily understood by "solicitation." To solicit, in law as in ordinary language, is to ask someone to do something, usually of a commercial or quasi-commercial character, for the solicitor—so one solicits a prostitute for sex (or the prostitute solicits one), or solicits donations to a charity, or solicits a competitor to join in a price-fixing conspiracy. A priest who urged conversion to the Catholic Church might be thought to be engaged in solicitation, and likewise Jehovah's Witnesses when they go door to door seeking converts. But the Pope is not soliciting when he gives a speech from the balcony of St. Peter's, even though it is implicit or explicit in his message that the listeners should conform their behavior to the teachings of the Church. That is the character of Brother Jim's preaching. If the Pope and Brother Jim are solicitors, almost anyone who opens his mouth to say anything is a solicitor.

The application of the university's solicitation policy to Brother Jim brings him to the verge of victory. The policy

as interpreted by the defendants to cover preaching the Gospel is hopelessly vague and thus a supple weapon for excluding from the university lawn those outsiders whose message the university disapproves of. But Brother Jim falls just short of prevailing because he has failed to show that *any* uninvited outsider has ever [10 No. 06-1441] been permitted to use the lawn for any purpose. No doubt outsiders wander in from time to time. The campus is not fenced, and outsiders are not forbidden to visit. They are classic licensees. But we are given no instance of an outsider's being permitted to do more than stroll on the lawn—no instance of an outsider's being permitted to give a speech, to play the bongo drums, to pitch a tent, to beg, to sunbathe, to play frisbee, or to engage in solicitation—without an invitation, whether from the university or from a faculty member or a student group.

This has long been a norm, and not just a practice: strangers to the university community are not to use the library lawn for purposes other than those unobtrusive, implicitly authorized uses of land (generally as a shortcut or other pathway) that distinguish a licensee from a trespasser. E.g., *Sammons v. American Automobile Association*, 912 P.2d 1103, 1105 (Wyo. 1996); *Lakeview Associates, Ltd. v. Maes*, 907 P.2d 580, 581-82 (Colo. 1995). So unlikely is it that a university or any other landowner would, as Brother Jim contends Vincennes University does, give strangers a right to roam the campus speechifying, begging, buttonholing, skateboarding, drag racing, etc., that he had to produce *some* evidence of that unlikely authorization in order to create a genuine issue of material fact—some evidence that would allow a reasonable jury to find that the university has such a permissive policy and merely denies Brother Jim the benefit of it lest his incendiary preaching ignite another disturbance.

Brother Jim does point to numerous expressive activities that have taken place on the library lawn, including

religious activities—preaching by a couple named Duncan and the annual distribution of free Bibles by the Gideon Society. But of all the expressive activities that have [No. 06-1441 11] taken place on the lawn, the record discloses only one that was not by invitation. The Duncans had not been invited. They had preached on the lawn in 1998, three years before Brother Jim's first visit, and the circumstances of their visit are hazy. One unauthorized use of the lawn would not come close to establishing the absence of a policy against use of the lawn by uninvited speakers. Maybe no one complained, and as a result the violation did not come to the attention of the university authorities—indeed, the dean of students attested that he had never learned of the matter. Perfect past compliance with a rule is not a precondition to being allowed to continue enforcing the rule. Otherwise few rules could be enforced, and universities would have to fence their open areas in order to limit access.

Brother Jim lists the following speakers or events that have taken place on the library lawn, in addition to the Duncans' preaching and the Gideons' handing out Bibles: Women of Essence; Black Male Initiative; Indiana National Guard; Kernan and Davis for Indiana campaign; Rebekka Armstrong (an HIV-positive former Playboy Playmate); Mark Sterner (speaker on drunk driving); Mentalist Craig Karges; TB Re-Screening; Student Part Time Job Fair; The Man Without a Face (an oral cancer survivor who lost half his jaw and part of his tongue); Health Screening; Ariana Huffington; Dr. Peter DeBenedittis (speaker on how the media manipulate consumers); Manufacturing Job Fair; Amanda Persinger (pharmaceutical representative); Prentis Hall Sales Representative; Tupperware Multihost Bingo/Party; Kevin Riggins (speaker against athletic doping); Kelly Craig (speaker against drunk driving); and the Red Cross Blood Drive. This bewildering miscellany refutes an inference of dis [12 No. 06-1441] crimination against disfavored points of view, or of a university administration

fearful of controversy and of the disturbances that might ensue. As far as appears, any student group can invite any speaker to speak on the library lawn. The diversity of speakers mirrors the diversity of the university community.

Of course there would be even greater diversity of viewpoints if *anyone*, invited or uninvited, could use the lawn for expressive activity; for apparently no one in the Vincennes University community wants to invite Brother Jim to speak. He wants to turn the lawn into an American version of Speakers' Corner in London's Hyde Park, where anyone can speak on any subject other than the Royal family or the overthrow of the British government. The limits that Vincennes University has placed on the use of the library lawn are consistent with limiting university facilities to activities that further the interests of the university community. The limits are constitutional.

We should note that the defendants wanted us to pitch our analysis on the distinction that the Supreme Court has drawn between "traditional public forums," "designated public forums," and "nonpublic forums." E.g., *Good News Club v. Milford Central School*, 533 U.S. 98, 106-07 (2001); *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678-79 (1992). The first consist of streets and parks and other public property that are traditional, and, the Supreme Court has ruled, irrevocable venues for expressive activity (marches, demonstrations, harangues, and so forth). The second consist of public facilities for expression that are nontraditional, such as public theaters, and used for only some types of expressive activity even though they could be used for others as well—a public theater could be used for political rallies. The Court [No. 06-1441 13] does not require that they be used for expressive activities for which they were not intended to be used, provided that there is no discrimination based on the message of the excluded speaker, or that their use for expressive activity be irrevocable. The third category consists of public facilities

like the Justice Department's auditorium that could be used for private expressive activities but are not—and they do not have to be.

The difficulty with using the "forum" template to resolve this case—a difficulty that is common enough where rules are concerned—is that the present case falls into a crack between the rules. The library lawn is not open to all outsiders, or closed to all outsiders, or reserved for some uses but not others. To fill the crack, cases such as *Bowman v. White*, *supra*, 444 F.3d at 975-76; *Justice for All v. Faulkner*, 410 F.3d 760, 765-69 (5th Cir. 2005), and *Travis v. Owego-Apalachin School District,* 927 F.2d 688, 692 (2d Cir. 1991), have carved out a fourth category—a variant of the second, the "designated public forum." This fourth category is variously (and confusingly) termed the "limited designated public forum" (versus the "true forum"), the "limited public forum," or the "limited forum." The terms denote a public facility reserved for some speakers but not others, here members of the university community and their guests but not uninvited outsiders.

We doubt the utility of multiplying categories in this fashion, thus adding epicycles to an already complex scheme and turning the search for sensible results into a classification game. The issue more simply posed is whether a university should be able to bar uninvited speakers under a policy that by decentralizing the invitation process assures nondiscrimination, and a reasonable diversity of viewpoints consistent with the univer [14 No. 06-1441] sity's autonomy and right of self-governance. We have tried to explain why the Constitution does not commit a university that allows a faculty member or student group to invite a professor of theology to give a talk on campus also to invite Brother Jim and anyone else who would like to use, however worthily, the university's facilities as his soapbox. To call the library lawn therefore a "limited designated public forum" is an unnecessary flourish.

AFFIRMED.

A true Copy:
Teste:

_____
Clerk of the United States Court of Appeals for the Seventh Circuit
USCA-02-C-0072—2-14-07

APPENDIX B

United States District Court,
W.D. Wisconsin.
James G. GILLES, Plaintiff,
v.
BRYAN K. BLANCHARD, John Livers,
Defendants.
2:04-cv-083-LJM-WGH.

January 1, 2007.

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on cross motions for summary judgment by Plaintiff James G. Gilles ("Gilles") and Defendants Bryan K. Blanchard and John Livers (collectively "Defendants"). Gilles brought this suit challenging Vincennes University's "sales and/or solicitation" policy and seeking injunctive relief, declaratory relief, and damages pursuant to 42 U.S.C. §§ 1983 and 1988. The parties have fully briefed their arguments and this matter is now ripe for ruling.

For the reasons stated herein, the Court GRANTS Defendants' Motion for Summary Judgment and DENIES Gilles' Motion for Summary Judgment.

I. BACKGROUND

Gilles is a traveling evangelist. Complaint, ¶¶ 10-12. He arrived on the campus of Vincennes University ("VU") in 2001 and preached his message in an open area located in the middle of campus. Gilles Aff., ¶ 5; Second Gilles Aff., ¶¶ 4, 11-12, Ex. A; Complaint, ¶ 17. After [Case 2:04-cv-00083-LJM-WGH Document 64 Filed 01/13/2006 Page 2 of 7] a

disturbance ensued, Gilles was asked to leave. Livers Depo., pp. 27-28.

VU's Board of Trustees subsequently approved a "sales and/or solicitation" policy on or about June 26, 2002. Second Livers Aff., ¶ 3; Livers Depo., Ex. 1. The policy requires those who wish to engage in solicitation to obtain prior approval from the Dean of Students on the date and time of the solicitation, and it designates the brick walkway in front of the Beckes Student Union as the area for solicitation. Livers Depo., Ex. 1. The policy was designed with uninvited outsiders in mind, and no uninvited outside person or group has been permitted to solicit on the campus except for in the designated area. Livers Aff., ¶ 12; Livers Depo., p. 25, ll. 6-8. The purpose of the policy is to promote education and safety, prevent disruption, and to inform VU's officials that outsiders are present on the campus. Livers Aff., ¶ 17; Livers Depo., p. 17, ll. 4-5, 8-10; p. 19, ll. 11-13. Since the policy's adoption, no request for solicitation has been denied. Livers Aff., ¶ 16; Second Livers Aff., ¶ 7; Livers Depo., p. 82, ll. 18-21.

On August 29, 2002, Gilles returned to VU and attempted to speak at the open area in the middle of campus. Gilles Aff., ¶ 5; Second Gilles Aff., ¶ 12 and Ex. A; Livers Aff., ¶ 6; Livers Depo., pp. 32-33. He was approached by a VU police officer and informed that he was not permitted to carry on his speech in the area and that he needed to fill out a solicitation request with the Dean of Students. Gilles Aff., ¶ 6; Livers Aff., ¶ 8. He then went to see the Dean, Defendant John Livers and filled out a solicitation request, which was approved. Gilles Aff., ¶ 7; Livers Aff., ¶ 10; Livers Depo., p. 37 and Ex. 3. Gilles then went to the designated area but decided that it was not to his liking and left. Gilles Aff., ¶¶ 9-11 Thereafter he filed this lawsuit. [Case 2:04-cv-00083-LJM-WGH Document 64 Filed 01/13/2006 Page 3 of 7]

II. STANDARD

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). *See also United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267-68 (7th Cir. 1990), *cert. denied*, 111 S.Ct. 1317 (1991). Motions for summary judgment are governed by Rule 56(c) of the Federal Rules of Civil Procedure, which provides in relevant part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials which "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A genuine issue of material fact exists whenever "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996), *cert. denied*, 520 U.S. 1116 (1997). It is not the duty of the court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he

relies. *See Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996). When the moving party has met the standard of Rule 56, summary judgment is mandatory. [Case 2:04-cv-00083-LJM-WGH Document 64 Filed 01/13/2006 Page 4 of 7] *Celotex*, 477 U.S. at 322-23; *Shields Enters., Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992).

In evaluating a motion for summary judgment, a court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. *See Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996), *cert. denied*, 519 U.S. 1109 (1997). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. *See Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. *See Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). "If the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party." *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115 (1997).

III. DISCUSSION

Gilles is challenging VU's "sales and/or solicitation" policy. He takes issue with the policy because he is not permitted to use his venue of choice, the open area of campus. Instead, he has been allowed to use the designated area, which he considers to be a less desirable venue.

An initial determination must be made regarding the nature of Gilles' preferred venue because the level of

scrutiny applied to a restriction on speech is dependent upon the classification of the forum. The Supreme Court has identified three distinct types of fora for the purposes of the [Case 2:04-cv-00083-LJM-WGH Document 64 Filed 01/13/2006 Page 5 of 7] First Amendment: (1) the traditional public forum; (2) the designated (or limited) public forum; and (3) the non-public forum. *See Arkansas Educ. T.V. Comm'n v. Forbes*, 523 U.S. 666, 677 (1998). Traditional public fora are defined by the objective characteristics of the property, such as whether, "by long tradition or by government fiat," the property has been "devoted to assembly and debate." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). In contrast, designated public fora is property that has been created by purposeful government action to open the area for expressive activity. Courts look to "the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum." *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985).

Here, Gilles' preferred speaking venue is situated in the center of VU's campus and is not contingent to any public street or sidewalk. Gilles Aff., ¶ 5; Second Gilles Aff., ¶ 12 and Ex. A; Livers Aff., ¶ 6. There is no evidence that the area has by long tradition or fiat been devoted to or set aside for expressive use by the general public. In fact, Dean Livers is unaware of any uninvited outside persons using the area for public speaking other than Gilles in 2001. Livers Aff., ¶ 4; Second Livers Aff., ¶ 5; Livers Depo. p. 17, ll. 13-23. In addition, there is also no evidence that VU has purposefully dedicated the area for expressive use by the general public. The Court therefore finds that Gilles' preferred venue, the open area of campus, is not a public space as it relates to Gilles, an outsider to the campus and its community.

Because the nature of the forum dictates the applicable standard for First Amendment analysis, the Court now turns to the nonpublic forum standard for First Amendment challenges. In such cases, the restraint on speech must be reasonable and viewpoint neutral. *Perry Educ. Ass'n*, 460 U.S. at 46.

[Case 2:04-cv-00083-LJM-WGH Document 64 Filed 01/13/2006 Page 6 of 7]

The relevant portion of the VU policy requires those who wish to engage in solicitation to obtain prior approval from VU and it designates the brick walkway in front of the Beckes Student Union as the area for solicitation. Livers Depo., Ex. 1. Solicitation is defined as "the act of seeking to obtain by persuasion; to entice a person to action; or the recruiting of possible sales." Livers Depo., Ex. 1. It is difficult to accept Gilles' insistence that the policy does not apply to him given that the circumstances of his visit and his stated purposes are to speak to students on moral topics and behaviors with the hope that they will embrace his religious faith. Gilles Aff., ¶¶ 2-4, Second Gilles Aff., ¶ 3; Complaint, ¶¶ 10-12, 14-15. It is the Court's view that he is therefore within the application of the policy as his activities are clearly meant to persuade or entice a person to action.

As this policy applies to Gilles, the question becomes whether it passes muster under the standard for nonpublic forum, *i.e.*, whether it is reasonable and viewpoint neutral. Nothing in the policy expresses that it is aimed at suppressing a particular viewpoint or is aimed to exclude any particular person or group. In fact, it does not prohibit any speech at all but instead merely invites all to whom it applies to solicit in the same designated area, an area on campus where students go. The Court therefore concludes that the policy is viewpoint neutral.

Further, the purpose of the policy is to promote education and safety, prevent disruption, and to inform VU's officials about outsiders present on the campus. Livers Aff.,

¶ 17; Livers Depo., p. 17, ll. 4-5, 8-10; p. 19, ll. 11-13. As the Supreme Court has observed,

> a university's mission is education and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and non-students alike, or that a university must grant free access to all of its buildings and grounds.

Widmar v. Vincent, 454 U.S. 263, 267, n. 5 (1981). VU's solicitation policy is tailored to accomplish [Case 2:04-cv-00083-LJM-WGH Document 64 Filed 01/13/2006 Page 6 of 7] its educational mission. Accordingly, the Court concludes that the policy is sufficiently narrow, viewpoint neutral, and reasonable in light of VU's purpose for the policy. Gilles' challenge to the policy must therefore fail.[1]

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' Motion for Summary Judgment and DENIES Gilles' Motion for Summary Judgment.

---

[1] The Court also concludes that Gilles' due process concerns must fail. The policy is neither vague nor ambiguous but clearly provides notice to those who wish to solicit that they must obtain approval of the date and time of the solicitation and use the designated area.
Moreover, the policy's terms do not vest the Dean of Students with any discretion to evaluate the content of speech but simply require him to approve the date and time for the solicitation. Livers Depo., Ex. 1.

IT IS SO ORDERED this 13th day of January, 2006.

/s/Larry J. McKinney
LARRY J. McKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

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APPENDIX C

United States Court of Appeals
For the Seventh Circuit.
Chicago, Illinois 60604

March 12, 2007

Before

Hon. Richard A. Posner, *Circuit Judge*

Hon. Diane P. Wood, *Circuit Judge*

Hon. Terrance T. Evans, *Circuit Judge*

No. 06-1441

James G. GILLES, *Plaintiff-Appellant*, v.	Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

BRYAN K. BLANCHARD, *et. al.*, No. 2:04-cv-0083
Defendants-Appellees.

Larry J. McKinley, *Chief Judge.*

ORDER

On February 28, 2007, plaintiff-appellant filed a petition for rehearing *en banc*. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the petition for rehearing *en banc*. The petition is therefore DENIED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:04-CV-083-LJM-WGH
	)	
BRYAN K. BLANCHARD, ET AL.,	)	
	)	
Defendants.	)	

* * * * *

The deposition upon oral examination of JOHN LIVERS, a witness produced and sworn before me, Renee R. Dobson, Registered Merit Reporter, Notary Public in and for the State of Indiana, was taken on March 3, 2005, commencing at 9:30 a.m., at the offices of Hart Bell, 513 Main Street, Vincennes, Knox County, Indiana, pursuant to notice and the Federal Rules of Civil Procedure. This deposition was taken on behalf of the Plaintiff in the above-captioned matter.

* * * * *

CROSSROADS COURT REPORTING
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CROSSROADS COURT REPORTING [2]

INDEX OF EXAMINATION

PAGE

DIRECT EXAMINATION,
Questions by Ms. Murray 5

CROSS-EXAMINATION,
Questions by Mr. Siewers 82

REDIRECT EXAMINATION,
Questions by Ms. Murray 87

CERTIFICATE PAGE 88

CROSSROADS COURT REPORTING [3]

I N D E X O F E X H I B I T S

JOHN LIVERS/March 3, 2005:

Number	Identification	Page
1	Sales and/or Solicitation Policy	11
2	Sales and/or Solicitation Policy with Signature	34
3	Request for Solicitation Approval	37
4	Affidavit of John Livers	39
5	Letter from Scott Shipman	41
6	11/27/02 Letter	46
7	Dfts' Answers to Plf's First Set of Interrogatories	49
8	Verified Complaint	53
9	Amended Answer	54
10	3/24/04 Request for Solicitation Approval	61
11	3/17/04 Request for Solicitation Approval	64
12	2/3/03 Request for Solicitation Approval	65
13	1/12/04 Request for Solicitation Approval	67
14	11/4/03 Request for Solicitation Approval	70
15	10/30/03 Request for Solicitation Approval	71
16	10/2/03 Request for Solicitation Approval	72
17	8/29/03 Request for Solicitation Approval	72
18	8/9/04 Request for Solicitation Approval	74
19	10/26/04 Request for Solicitation Approval	75
20	8/30/04 Request for Solicitation Approval	76
21	5/7/02 Agreement	78
22	Agreement for the Services of Mark Sterner	79

CROSSROADS COURT REPORTING [4]

JOHN LIVERS,
having been first duly placed under oath, was examined and
testified as follows:
DIRECT EXAMINATION
By Ms. Murray:
Q Good morning.
A Good morning.
Q Again, my name is Elizabeth Murray, and this is Nate Kellum
for the plaintiff. Thank you for meeting us here today.
A You're more than welcome.
Q This deposition is primarily a factual interview just to
give us an idea of how you view the facts and the issues in
this case. I'm not planning any trick questions. I would
appreciate if only one person would speak at a time so that
the answers could be, you know, fully given, both the
questions and the answers. And if you would, just respond
verbally rather than saying uh-huh or just nodding.
A Okay.
Q And then feel free to let me know if you, you know, need a
break. And, also, I just request that you would answer all
the questions unless your attorney instructs you not to.
A Sure.
Q Thank you. To start off with, I was wondering if you have
been deposed before in any other case?
A No.

1 Q Okay. Could you briefly explain your educational background
2 for me?
3 A As far as years and where I've been?
4 Q Yes, please.
5 A I graduated from Indiana State in 1979 with a bachelor's
6 degree in therapeutic recreation; most recently completed my
7 master's in human resource development, also through Indiana
8 State.
9 Q Congratulations.
10 A Thank you.
11 Q Who is your present employer?
12 A Vincennes University.
13 Q Okay. And how long have you been employed for Vincennes
14 University?
15 A Since '93, August of '93.
16 Q Okay. And what is your job title there at the university?
17 A I am the Dean of Students.
18 Q Okay. Now, what are your duties at the university?
19 A Well, there's many, but what I do is I basically supervise
20 the Student Center, and in those offices are the Dean of
21 Students office, Judicial Affairs, Student Activities, the
22 Multicultural and International Student Offices.
23 Q Okay. Quite a lot under your direction?
24 A Sometimes, yes.
25 Q As part of your responsibilities are you also--is it also

1 your responsibility to oversee the use of campus grounds and
2 facilities?

A I'm not sure what you mean by that.
Q Okay. As far as when different individuals are wanting to
have different events and hold expressive activities on
campus, do you oversee giving permission?
A I handle the solicitation requests. I sign off on those as
far as giving approval. And then I would supervise
activities, student activities so that I would be informed
of those, too.
Q Okay. Are you--do you oversee any other aspect except--or
rather, besides the solicitation forms as far as different
other performance agreements and various other aspects, or
is it solely the solicitation forms?
A To get my approval, it's solicitation, so that would be what
I would be. I think that's the answer to your question.
Q Thank you. Is your permission required then--am I
understanding you that your permission is required in order
for--if someone is to come--
A On any solicitation agreement, yes.
Q All right. As--I would like just a moment to talk about the
campus layout. Is there a fence that surrounds the entire
campus?
A No.
Q Okay. Are there security entrances where ID is required?

A No.
Q Okay. Is the campus open for outsiders to come onto the
campus? Can members of the community and citizens from

4 other states just come onto the campus?
5 A Yes.
6 Q Could an outsider come onto the campus without getting
7 permission and read the Gettysburg Address?
8 A I'm not understanding.
9 Q Okay. Sometimes I would--it's my understanding that there
10 are some things that an individual could do on campus
11 without having to fill out a solicitation form. Is one of
12 those activities coming on and perhaps just reading
13 something such as the Gettysburg Address?
14 A I would assume they could do that, sure.
15 Q Okay. All right. Could a person come onto the campus and
16 without getting permission just hold up a sign and say, have
17 a great day, students?
18 A Sure.
19 Q Okay. And then one more, could an outsider come onto the
20 campus and just have a sign around finals that said, study
21 hard?
22 A Sure.
23 Q Okay. Thank you. As of August 2002 what were the
24 guidelines that were in place that would govern your
25 decision of granting permission to--and granting permission

1 and approval when you would sign the solicitation forms?
2 A I believe that what you're talking about is the solicitation
3 policy that was in place.
4 Q Okay. Were there any other--are there any other policies
5 that relate to speech activities besides the solicitation
6 policy?

7 A As far as--I'm not--
8 Q I can clarify.
9 A Okay.
10 Q If there--does some speech occur on campus that is not
11 solicitation or sales?
12 A For--if you're talking about people just--I'm having a
tough
13 time. Are we talking about groups coming on campus, or
are
14 we talking about just people in general being on campus?
15 Are we talking about faculty and staff?
16 A We're talking about all of them, yes, students, faculty
and
17 staff, outsiders. If any of those individuals want to
18 engage in some sort of expressive activity on campus, and
it
19 doesn't happen to be solicitation or sales, is there another
20 policy that would govern that speech?
21 A It would be the same policy. The university people
would be
22 able to do that; but if an outside group came in, it would
23 fall under the solicitation policy that we have.
24 Q Okay. So is it my understanding that you're saying that
25 faculty and staff are not governed by the solicitation

1 policy?
2 A That's correct. They would be able to come to have a
forum
3 for speech.
4 Q Okay. And how would they go about doing that?
5 A It depends. If it's in their classroom, or if it's part of
6 the things, that's part of the educational mission.
7 Q Okay.
8 A If they are bringing folks on, or they are, you know,

9 inviting people to the university, normally, that goes
10 through the division offices. It wouldn't necessarily go
11 through our office. But we also--I think you have some of
12 the academic grants that we provide assistance through the
13 Student Activities Office for stipends for payment, so
14 there's a process that they would register through that
15 through the Student Activities Office.
16 Q Okay. And so the faculty could go through that process that
17 you were just speaking about; and whether or not the
18 activity was outside on the campus or inside in their
19 classroom, they would not have to fill out the solicitation
20 form?
21 A That's correct; that's correct.
22 Q Okay. Now, do students of Vincennes University, are they
23 required to fill out a solicitation form?
24 A If they're going to sell some things--
25 Q Okay.

CROSSROADS COURT REPORTING [10]

1 A --or do raffles or fund raisers, then they would. If not,
2 then they would not have to fill out the solicitation.
3 Q All right. What procedure must someone follow from start to
4 finish in order to be able to engage in speech?
5 A Are we talking inside of Vincennes community--or a Vincennes
6 University person or an outside group?
7 Q Let's start with a student.
8 A Okay. If a student were to do that, they could have--they
9 could just speak. Okay?
10 Q Okay.

11 A The same would be for a faculty member or a member of the,
12 you know, Vincennes University community, if you want to
13 call it that.
14 Q A moment ago you mentioned that if a student wanted to
15 engage in sales, they would have to fill out a
16 solicitation--a sales and solicitation form.
17 A Uh-huh.
18 Q When would a student have to fill out a solicitation form if
19 they wanted to solicit rather than engaging in actual sales?
20 A Can you clarify--give me examples?
21 Q Yes. Okay.
22 MS. MURRAY: Could I--could you enter this as Exhibit
23 1, please?
24 (PLAINTIFF'S EXHIBIT 1 MARKED)
25 Q Would you take a moment to review that? Do you know what

1 that is?
2 A Uh-huh.
3 Q What is that?
4 A This is our sales and solicitation policy.
5 Q Thank you. If you look at the second paragraph of the
6 policy, right underneath the sentence regarding the Board of
7 Trustees, that paragraph looks to me as if that deals
8 primarily with sales that occur on campus; is that correct?
9 A Uh-huh.
10 Q And then if you look--
11 A I'm sorry. I meant to say yes.

12 Q Thank you. If you look at the paragraph below that, that
13 appears to me that it addresses solicitation. So I think
14 the university draws a distinction between sales and
15 solicitation; is that correct?
16 A Yes.
17 Q Now, would you look at line 1 of the second--of the third
18 paragraph, please, and it says that, "Vincennes University
19 requires prior approval of all solicitation on campus by any
20 person or organization." So it's my understanding what that
21 sentence is saying that any time any individual wants to
22 engage in solicitation on campus that prior approval is
23 required; is that correct?
24 A I would--looking at this, I'd say yes. Okay.
25 Q Okay. So do students who would want to engage in

1 solicitation rather than a sale be required to fill out a
2 solicitation form?
3 A Well, again, by solicitation, can you give me an example of
4 what you might mean by that?
5 Q Yes. Would you look at the bottom line of paragraph 3? It
6 defines, "Solicitation as an act of seeking to obtain by
7 persuasion or enticing a person to action or recruiting of
8 possible sales." Would a student be required to solicit--to
9 fill out a solicitation form if they wanted to engage in
10 something that fell under one of those three definitions
11 that I just read?
12 A I don't believe so. I think it would be for sales or for
13 raffles or fund raisers.

14 Q Okay. Thank you. And, again, are there any other forms
15 besides the solicitation forms that you're aware of that any
16 individual would have to fill out in order to engage in
17 speech activity?
18 A No, this would be it.
19 Q Thank you. Is there any speech activity that you have seen
20 in your experience at the university that has not fallen
21 within the categories of solicitation or sales?
22 A Again, I'm not--
23 Q Okay. We talked about it--
24 A I'm sorry. Go ahead.
25 Q Okay. Earlier you said that the only policy that you have

1 in place relating to speech activity is the sales or
2 solicitation policy that we just looked at and is marked as
3 Exhibit 1?
4 A Uh-huh.
5 Q Is there any other speech activity that you could foresee
6 that would not fall within the sales or solicitation policy?
7 A For outside groups coming in, I don't believe so.
8 Q Okay. And is there other speech that you would not consider
9 sales or solicitation that a student would engage in?
10 A I would think that they would have discussions in classrooms
11 or things like--is that what you're meaning?
12 Q Yes, thank you.
13 A Okay.
14 Q Is there also speech activity that a student would engage in

15 outdoors, not in the classroom that you would consider not
16 sales or solicitation?
17 A Yes.
18 Q What would that be?
19 A Could be classroom activities outdoors, could be just
20 exchange of ideas sitting around a park bench. I would
21 assume that would fall under what you're asking.
22 Q Thank you. Could I draw your attention again to the exhibit
23 that you have in front of you?
24 A Uh-huh.
25 Q You already said that you recognize that as a sales and

1 solicitation policy. Were you involved in the drafting and
2 passage of the policy?
3 A I was one of the people who were a part of this, yes.
4 Q Could you describe the process that you went through to
5 draft the policy?
6 A Well, we had the sales and solicitation policy prior to
7 this, and that was prior to 2001-2002 year. When we looked
8 at this to realign or redo or whatever you want to say with
9 this, we took a look--we wanted to have a way that we could
10 have an idea of people who were coming on campus. So what
11 we tried to do was combine the two policies. One would be
12 the sales and solicitation that was already in practice and
13 then also a way to review or to recognize people who wanted
14 to come on campus.

15 Q Okay. Was the prior policy before you developed the one
16 that's marked as Exhibit 1, did you have an official policy
17 that was written down that the Board of Trustees had
18 adopted? I can state that again.
19 A Yeah.
20 Q The policy in front of you as Exhibit 1, that's a written
21 policy.
22 A Yes.
23 Q Was there a written policy concerning sales and solicitation
24 prior to that policy?
25 A There was a solicitation policy--sales and solicitation

CROSSROADS COURT REPORTING [15]

1 policy prior to that.
2 Q Okay. Would it be possible for us to get a copy of that?
3 A I'm sure we can find one.
4 Q Okay. Do you know if that's with you today?
5 A I do not have that with me today.
6 Q Okay. Thank you. We'd appreciate that. Did you draft the
7 actual language of the new policy?
8 A I was not a part of the language drafting.
9 Q Is there a committee involved in the drafting process?
10 A I don't know that you would necessarily call it a committee,
11 but there were a number of people in student affairs that
12 were a part of that.
13 Q Do you know who they were? Do you know who the individuals
14 were that were involved in drafting the new policy?
15 A I believe Lynn White, myself. I'm not sure if Dale Dowden

16 was involved with that, but I would say that he would have
17 been aware of the policy, and he's the provost.
18 Q Okay. Do you know how long it took to draft the policy? Is
19 it something that people met on a weekly basis?
20 A I don't remember. I can't say for sure.
21 Q What was your specific involvement in the drafting process?
22 A Giving ideas, exchanging thoughts, just more or less--I
23 can't--
24 Q That helps me. Okay. What ideas--in your experience on
25 campus what ideas did you bring to the drafting process?

CROSSROADS COURT REPORTING [16]

1 A I think what we wanted to look at was the fact that with the
2 campus for outside groups, we wanted to make something that
3 was fair for everybody and was consistent with--for all
4 groups to come on; but we also wanted to make sure that we
5 had a way of being aware of who was on our campus.
6 Q And what were your reasons for wanting to be aware of what
7 was going on on campus?
8 A Well, for one, to protect the mission of the university
9 which is educational; and then, two, would be to make sure
10 it's a safe environment for the students.
11 Q Okay. Thank you. Was there a particular event that
12 prompted the policy change?
13 A With Reverend Gilles coming to the university in August of

14 2001, that was the first time in my recollection that
15 anyone--any outside group just came to the university
16 uninvited. There was some difficulties during that time, so
17 that made us take a look to see what we needed to do to be
18 more aware of what goes on on our campus.
19 Q Were there other events that you can recall other than Mr.
20 Gilles's first visit that prompted the policy change?
21 A He's been the only person that's come on the campus that's
22 uninvited that had not gone through that process. He was
23 the first person that I can ever remember doing that.
24 Q And how long has Vincennes University been established?
25 A 1801.

1 Q 1801? And Mr. Gilles is the only outside group?
2 A No, no, that's just in my recollection.
3 Q Okay. In your recollection.
4 A Yeah. And, again, I've been there since '93.
5 Q Okay. Have you spoken to others who were there before you
6 who have had experiences with outsiders who came onto the
7 campus?
8 A Not that I can remember. Again, when we met, I don't--I
9 can't remember anybody saying that that had happened before.
10 Q Okay. Thank you. Are you the official that's responsible
11 for enforcing the solicitation policy?
12 A Yes.

13 Q Is there another official who is also responsible to enforce
14 the policy?
15 A In any of the things that we do, there is an appeal process,
16 and an appeal process would go to Lynn White.
17 Q Okay. Could you describe the appeal process for me?
18 A It would be basically that if they met with me, and they
19 didn't agree with what I said, they would in turn go to Lynn
20 and talk with her.
21 Q Okay. Did you inform Mr. Gilles of the appeal process when
22 he visited you on August 29th of '02?
23 A You know, I'm not sure if I specifically said that there's
24 an appeal process, but I know that Reverend Gilles went and
25 talked with Lynn.

CROSSROADS COURT REPORTING [18]

1 Q Thank you. Were you in the meeting with Lynn and Mr.
2 Gilles?
3 A No.
4 Q You noted earlier that one of the purposes of the
5 solicitation policy was ensuring the safety of the campus.
6 Are there any other purposes that you're aware of that the
7 policy was written to remedy? I can rephrase that.
8 A Thank you.
9 Q Are there any other purposes that you know of for the sales
10 and solicitation policy besides the safety of the campus?
11 A For outside groups to come on campus, if they're not invited
12 by faculty, staff, students, it helps to make us aware of
13 the outside groups that come on, so that's the purpose.

14 Q Thank you. Could you look again specifically at the
15 language of the policy in Exhibit 1? And I'm looking at
the
16 first line about the Board of Trustees, and it states that
17 this particular policy has been adopted by the Board of
18 Trustees. Are all official policies adopted by the Board of
19 Trustees at some time?
20 A That's my understanding.
21 Q Okay. And looking at the first line of the second
22 paragraph, it states that the university, "requires prior
23 approval for all sales on campus by any person or
24 organization." Does this mean that no one engages in a
sale
25 without Vincennes University being aware of it and--
excuse

CROSSROADS COURT REPORTING [19]

1 me--and granting prior approval?
2 A To say that no one does, I don't know that I could be that
3 exact. But if anybody on campus has a sales project,
4 whatever, they are required to come to us. That's the
5 policy. You know, I think that pretty much everyone
follows
6 that.
7 Q And is prior approval required for outsiders, faculty and
8 students? Is prior approval for sales required for faculty,
9 students and outsiders?
10 A Yes, yes.
11 Q Thank you. If you jump down to the line that reads the
Dean
12 of Students--and I'm still in the second paragraph--it
13 states that the Dean of Students--and, again, I assume
14 that's you--
15 A Uh-huh.
16 Q --is that correct?--

17 A Yes, yes. Sorry.
18 Q --that you retain the right of approval of the product or
19 activity as well as a date, time or location. The way I
20 read that is that you have the ultimate authority to
21 determine who can be there and who cannot be there to engage
22 in sales; is that correct?
23 A That's correct.
24 Q It also states in that same line regarding the Dean of
25 Students that you also determined the date, time and

1 location of the sales; is that true?
2 A No, I don't determine it, but it's a part of the form. So
3 when they request it, they put the date, time and what the
4 purpose of the sale is.
5 Q Okay. And are there any times where you look at the date,
6 time and location of the sale, and you change--and change
7 what the students, faculty member or outsider wrote for a
8 sale?
9 A The only reason that we would have a change, a date, time or
10 location is if there was a previous reservation or the
11 facility that they want to use is already being in use.
12 Q Okay. Are there any--do you recall any situation where a
13 student, faculty member or outsider was seeking permission
14 for a sale where you changed the location, and it was an
15 outside location?
16 A I'm not following.
17 Q Okay.
18 A I'm sorry. Go ahead.

19 Q Okay. The line concerning Dean of Students states that you
20 have to approve the location of a sale. Has a student ever
21 submitted a sales solicitation request for a sale where you
22 changed the location for them?
23 A I don't remember that happening.
24 Q Okay. Would you look at the third paragraph, first line?
25 It says the university, "requires prior approval for all

CROSSROADS COURT REPORTING [21]

1 solicitations on campus by any person or organization." You
2 stated earlier that this applied--that students and faculty
3 did not have to fill out a solicitation form. The first
4 line here seems to contradict that. Can you explain why
5 students and faculty do not have to fill out a solicitation
6 form when it says that prior approval is required by any
7 person or organization?
8 A Well, I think the---when we took a look at making the
9 changes in this form, we looked at being--that it would be
10 for groups off campus that were coming onto campus. And I
11 believe that that is more talking toward a person or an
12 organization that was not affiliated with the university.
13 Q Is there any reason that you know of that the word,
14 outside--by any outside person or organization wasn't added
15 to the policy?
16 A I do not know.
17 Q Okay. The second line of the third paragraph states,
18 "Again, the Dean of Students will approve the date and time
19 of the solicitation." I believe that, again, refers to the
20 sentence in the paragraph above where it's talking about the

21 Dean of Students. Do you know if that sentence refers to
22 that previous sentence?
23 A To me?
24 Q Well, it uses--the word, again, is used, so my
understanding
25 is that this sentence would be referring also to the Dean of

1 Students sentence in the paragraph above?
2 A That would be correct.
3 Q Okay. And it states that you will approve the date and
the
4 time of the solicitation. Is that correct that you do?
5 A I would approve the--yes.
6 Q Okay. Have you ever changed the date and the time of a
7 solicitation request that was submitted to you?
8 A I can't ever remember doing that. I can't remember doing
9 that.
10 Q The next line states that you, "notify appropriate
11 University personnel regarding the campus location for
the
12 solicitor." Is that correct that you do notify university
13 personnel?
14 A Yes.
15 Q Which locations have you notified university personnel
of
16 concerning use by solicitors?
17 A If it's a university group that would--well, this would be
18 for the outside groups. So if it's an outside group, they
19 would use the brick walkway in front of the university
20 student activities--or the student union.
21 Q Okay. Now, if you look at the next line, it says, "The
22 designated area on campus for solicitation is the brick
23 walkway directly in front of the Beckes Student Union."
In

24 light of the previous sentence which talks about notifying
25 university personnel of the location, why would it be

CROSSROADS COURT REPORTING [23]

1 necessary to notify the university personnel of the location
2 if it was always the brick walkway?
3 A Again, I think if we have a group that comes, and we're
4 talking about outside groups coming in, we would still
5 notify the appropriate university personnel if we have off-
6 campus groups that will be on campus if that is warranted.
7 Q Okay. If there is one designated area, why would it be
8 necessary to notify concerning their location?
9 A To make them aware that we have someone on campus.
10 Q Okay. Are there any other solicitation requests that you
11 have approved where the speech--where the solicitation
did
12 not occur on the brick walkway?
13 A No.
14 Q Okay. Would you look at the sentence that reads,
15 "Solicitation is the act of seeking to obtain by persuasion;
16 to entice a person to action; or the recruiting of possible
17 sales." That is the last line in the third paragraph of the
18 policy. What does the word, solicitation, mean to you as
19 related to this policy?
20 A Well, as it says, it's the act of trying to persuade or
21 entice someone to action, and that's the way we've used
that
22 here in this policy.
23 Q What does the term, "seeking to obtain by persuasion,"
mean
24 to you?
25 A I would assume it means to persuade someone.

CROSSROADS COURT REPORTING [24]

1 Q Okay. But the words of, "to obtain by persuasion" are also
2 included. Is it just--you stated earlier that sometimes
3 students are involved in just exchanging ideas. Couldn't
4 that also be a form of obtaining by persuasion that would
5 require them to fill out a solicitation request?
6 A Well, again, when we talked about this, and we put this
7 down, we were looking at the outside groups. We weren't
8 looking at the university groups.
9 Q Okay. And do you require an outsider to actually be trying
10 to obtain something in order for the solicitation request to
11 be followed? Okay. I can rephrase that.
12 A Thank you.
13 Q One of the definitions for solicitation is seeking to obtain
14 by persuasion. Do you require an outsider to be obtaining
15 something by persuasion rather than just seeking to persuade
16 in order to fill out a solicitation request?
17 A I'm not understanding that there's a whole lot of difference
18 between seeking to obtain or trying to persuade. I'm not
19 clear on the question.
20 Q Well, I'm confused with the words "to obtain by persuasion."
21 To obtain means to get something. And so if you're not
22 seeking to get something, how would that be seeking to
23 obtain by persuasion?
24 A I guess I can't answer it. I'm not understanding what
25 you're trying to--what you're asking.

1 Q All right. So basically, whether you're trying to persuade

2 somebody or seeking to obtain something by persuasion, you
3 consider both covered by the policy?
4 A I'm sorry. I don't mean to be difficult. I'm just having a
5 tough--I'm not understanding what you're--the question.
6 Q Okay. There could be a situation where somebody is trying
7 to persuade individuals when they come on campus. And then
8 other times they're coming--other times individuals could
9 come onto campus to obtain something from students. Do you
10 require somebody to obtain in order to be covered by the
11 policy?
12 A I'm going to ask you a question. Maybe it will clear it up
13 for me. There is speech to persuade someone to do
14 something, or there's speech to persuade them to give you
15 something. Is that what you're asking?
16 Q Yes, that's what I'm asking.
17 A I think this would cover it both then.
18 Q Okay. Thank you. What does the term "enticing a person to
19 action" mean to you?
20 A Through--it would be to act or to--I guess it would be to
21 act, for a person to act.
22 Q Thank you. Approximately, how often do you notify
23 university personnel of solicitors?
24 A We would notify them whenever a policy is applied for.
25 Q Do you mean whenever a request form--

1 A I'm sorry. Yes, whenever a request is made.

2 Q Okay. And on a weekly basis about how many times does that
3 occur?
4 A It wouldn't even be on a weekly basis.
5 Q Okay. Do you know where the start and the end of the brick
6 walkway in front of the Beckes Student Union is?
7 A Where the start and the end is?
8 Q Yes.
9 A I would say from the building to the street.
10 Q The building to the street. And then what about the length?
11 When does it start, and when does it end? When does the
12 sidewalk start and end?
13 A In front of the union, the area in front of the union is all
14 brick, so it's pretty well laid out just because of the
15 brick itself.
16 Q Does the brick walkway start at the--one side of the
17 building and go to the other side of the building, or does
18 it go beyond the building?
19 A It does not go beyond the building. It's an area right in
20 front of the doors, and, again, it's the brick area.
21 Q Is it the brick area that spans the entire building or just
22 in front of the doors?
23 A I don't think there is any brick that spans the entire
24 building.
25 Q Okay. Do you recall when Jim Gilles visited the campus in

1 2001?
2 A Yes.
3 Q What do you recall about that event from start to finish?
4 A I would have been notified that he was--that there was a

speaker on campus. When I went there, he was in the grassy
area in front of the library. He had had--he was speaking
to a number of students there. There was some--a
disturbance, and at one point the campus police felt like he
was in danger. And they asked him to leave, and he did.
Q Was Mr. Gilles disrupting any classes when he was in
Vincennes University in 2001?
A That's hard for me to say. I'm not an instructor. He
wasn't--he was outside, but I don't know if he did or not.
Q Do you know the area where Mr. Gilles was at during his
first visit?
A Uh-huh, yes.
Q Where was that?
A It was a grassy area in front of the library and beside the
administration building.
Q Are there any classrooms that are in that immediate
vicinity?
A There's a classroom building probably--there's a classroom
building right next to the library and the classroom
building down the street, so it would be less than a block.
Q Okay. Did anybody--did any administration or faculty

approach Mr. Gilles when he was at the university in 2001?
A Did they approach him?
Q Yes.
A In what way?
Q Did anyone related to the university approach Mr. Gilles
when he was there at the campus in 2001?

7 A If you're asking were there faculty or staff present, I know
8 that there was staff present.
9 Q Who was present when Mr. Gilles was speaking in 2001?
10 A I was there, and the chief of police, Harold Hensley, was
11 there. I believe--I can't say for sure anybody else, but I
12 know the two of us were there.
13 Q Did any of you--did any of the officials that you just named
14 speak to Mr. Gilles on that day?
15 A Mr. Hensley did.
16 Q Do you know--did you hear what Mr. Hensley said to Mr.
17 Gilles?
18 A Yes. He said, I--and this isn't a quote, but I'll
19 paraphrase.
20 Q Thank you.
21 A But basically, he said, I am worried about you; that there's
22 risk, and I'm asking you to leave the campus.
23 Q Okay. Do you know what the risk was for Mr. Gilles?
24 A He was receiving threats from students.
25 Q Do you know which students--

1 A No.
2 Q --threatened Mr. Gilles or appeared to threaten Mr. Gilles?
3 A I don't know names, no.
4 Q Could we jump back to a moment to the designated area in
5 front of the student union?
6 A Uh-huh.

7 Q Do you know why that specific area of campus was designated
8 for solicitation or any request by an outsider to engage in
9 speech?
10 A Why that area?
11 Q Yes.
12 A It's in front of the student union, and it seemed to be a
13 reasonable area for people to be able to speak since it is
14 the union.
15 Q Did you have any concerns about groups gathering and traffic
16 issues since the brick walkway is in front of a couple
17 different streets?
18 A Did we have any concerns?
19 Q Yes.
20 A We've used that area for other things, and it's worked out
21 before for large gatherings, and we felt that that was an
22 appropriate place.
23 Q Are there any other areas of campus that you think are
24 appropriate for speech activity by outsiders, students or
25 faculty?

1 A More appropriate or as appropriate?
2 Q Both, just generally?
3 A I feel very comfortable with the area that we've chosen.
4 Q Is that the area where--what other areas do students--it
5 doesn't have to be all three, but which areas have been used
6 for speech activities on campus by any person?
7 A The humanities, they will have a poetry reading in front of
8 the humanities building. There's an area by the dining
9 center where people have had events; and, also, the area
10 next to the student union that there is a large brick patio

11 kind of place.
12 Q In front of the student union or beside where they're at?
13 A Well, in front of the union, but also beside in the park.
14 Q Okay. Have any other student groups used the library lawn
15 area to engage in speech activities?
16 A Not to my knowledge.
17 Q Are you aware that Campus Christian Fellowship handed out
18 free watermelon on August 29, 2002 when Mr. Gilles was at
19 the campus, and they did that on the library lawn?
20 A It wasn't on the lawn. It was in front of the library, but
21 it was not on the lawn.
22 Q Do you know--did you recall the location of the table of the
23 Campus Christian Fellowship on that day?
24 A It would have been in front of the library, but it would
25 have been on the brick walkway. There's an area right there

1 in front of the library.
2 Q Okay.
3 A And the Christian Campus Fellowship is a university group.
4 It's a club, an organization.
5 Q Okay. Is Scott--do you know Scott Shipman?
6 A Yes.
7 Q Okay. And what is his relationship to the university?
8 A He serves as advisor for that group.
9 Q Is he a university employee?
10 A I don't believe he is paid by the university, but I'm not
11 sure of that.

12 Q Do you know if the Campus Christian Fellowship, do you know
13 how they had Scott Shipman join their group?
14 A He's been with them for as long as I've been at the
15 university.
16 Q Do you know if he's an outside minister?
17 A I'm not--I don't know.
18 Q Okay. Thank you. Do you recall Mr. Gilles's second visit
19 to the university in August of 2002?
20 A Yes.
21 Q Could you describe that event from start to finish?
22 A As best I can, he, I think, was in front of the library
23 again, that grassy area at that time--and this was before I
24 came, but he was told to come to the--to my office to fill
25 out the request. I was actually on my way to that area and

1 met him on the sidewalk between the union and the library.
2 We walked back to my office. He filled out a solicitation.
3 We talked for a little bit, and then he went out to the
4 brick walkway.
5 Q Do you recall the events before he came to your office?
6 A I wasn't around, so I don't know what occurred.
7 Q Were you told what occurred before Mr. Gilles came to your
8 office?
9 A I would have been called to say Mr. Gilles was on--in front
10 of the library, and that would have prompted me to start
11 walking that way.
12 Q Okay. Who called you concerning Mr. Gilles's visit?
13 A Don't know.
14 Q Okay. Were you called and asked to come outside, or were

15 you just called and given information?
16 A Again, I don't know. I don't remember the phone call
17 specifically.
18 Q Okay. I'm confused. Did you come outside because of
the
19 call, or were you already outside?
20 A No, I was in the office and got the call, and I was
walking
21 over there and then met Reverend Gilles in the way.
22 Q Did you walk outside because you were planning to go
see
23 what Mr. Gilles was doing, or were you on your way to
do
24 another errand?
25 A No, no, I was going over to talk with Reverend Gilles.

CROSSROADS COURT REPORTING [33]

1 Q Okay. Did you talk to Mr. Gilles--
2 A Uh-huh.
3 Q --outside--outside of your--outside of your office
building?
4 A As we were walking back to the office, yes.
5 Q Do you recall what you said to Mr. Gilles?
6 A No.
7 Q Okay. Do you recall what Mr. Gilles said to you?
8 A In the time outside?
9 Q Yes.
10 A No.
11 Q Okay. Do you recall what occurred inside your office
with
12 Mr. Gilles?
13 A I do remember him reviewing the policy and him filling
out a
14 solicitation for us.
15 Q Okay. Do you recall--okay.

16 MS. MURRAY: Would you mark this as Exhibit 2, please?
17 (PLAINTIFF'S EXHIBIT 2 MARKED)
18 Q Do you recall this document?
19 A Uh-huh.
20 Q What is that documents?
21 A This is our sales and solicitation policy.
22 Q Do you recall giving that document to Mr. Gilles?
23 A Yes.
24 Q When did you give that to Mr. Gilles?
25 A In my office.

CROSSROADS COURT REPORTING [34]

1 Q Do you recall writing--underlining the sentence in the 2 policy?
3 A No, I don't.
4 Q Okay. Do you recall writing the name on the bottom of the
5 page?
6 A That's not my handwriting.
7 Q Okay. Do you remember what you told Mr. Gilles about the
8 policy?
9 A No--verbatim, no.
10 Q What do you recall to the best of your recollection?
11 A That we had designated an area in front of the student union
12 as the spot for him to speak, and he was welcome to speak
13 there.
14 Q Okay. Can Mr. Gilles--is there anything that Mr. Gilles
15 could say on campus, and it not be considered solicitation?
16 A I'm not following.
17 Q Okay. In the--can you look at the definition section of

18 what solicitation is?
19 A Uh-huh.
20 Q It's in the third paragraph.
21 A Sure.
22 Q Is there anything that Mr. Gilles could say on campus that
23 would not be--that would not meet that definition of
24 solicitation?
25 A Again, I'm not sure what you're asking. Could he just come

CROSSROADS COURT REPORTING [35]

1 on and talk to people; is that what you're saying?
2 Q Yes.
3 A I assume he would be welcome to come on campus.
4 Q When Mr. Gilles was told to go to the--to your office to
5 fill out a solicitation request, did you know what he was
6 going to say to students on that day?
7 A Do I know? I would not know what he was going to say.
8 Q Okay. Do you know if Mr. Hensley, Chief Hensley, knew what
9 Mr. Gilles was going to say?
10 A I would not know that.
11 Q Okay. So do you think it was premature to have Mr. Gilles
12 fill out a solicitation request without having known what he
13 was going to say that day?
14 A No, he was an outside person to come on campus, and he was--
15 if he's an outside group wanting to come on and speak on
16 campus, he would need to fill this out.
17 Q He would need to fill what out?
18 A I'm sorry. The sales and solicitation request.

19 Q So am I understanding you that it doesn't really have to do
20 with whether or not someone's speech is solicitation so much
21 as if they're an outside group, they're required to fill out
22 a form?
23 A If it's an outside group that has not been asked to come on
24 campus, and they want to come on campus to speak, then they
25 would fill this out, the sales and solicitation request.

CROSSROADS COURT REPORTING [36]

1 Q All right. What if just--so any group who comes onto
2 campus, any individual who is not--okay. So the way I'm
3 understanding is that any outside group, any outside
4 individual who is coming onto campus, even if their speech
5 doesn't qualify as solicitation, they still need to fill out
6 a solicitation request; is that correct?
7 A No, that's not correct because, again, if they're invited by
8 the university, then they wouldn't have to fill this out.
9 But if it's an outside group that is not invited, then we
10 ask that they fill this out so that we're aware of who is on
11 our campus.
12 Q Okay. Would you take a look at this?
13 MS. MURRAY: And would you please mark it as Exhibit 3?
14 (PLAINTIFF'S EXHIBIT 3 MARKED)
15 Q Do you recall that form?
16 A Yes.
17 Q What is that form?
18 A This is the request that Mr. Gilles filled out in 2002.
19 Q Okay. What location did you approve on this--on Mr.
20 Gilles's request for solicitation approval?
21 A The Beckes Student Union.

22 Q What was Mr. Gilles's preferred location on that day?
23 A He wrote down west library lawn.
24 Q Why didn't you cross that out when you signed the form?
25 A I don't know.

CROSSROADS COURT REPORTING [37]

1 Q Okay. And, again, did you go by and see the Campus
2 Christian Fellowship's table when they were handing out
3 watermelon on August 29, 2002?
4 A I did not.
5 Q Did you see the table when you were informally escorting Mr.
6 Gilles back to your office?
7 A I hadn't gotten that far.
8 Q Okay. Were you aware that they were handing out watermelon
9 on that day?
10 A I can't say for sure that I was.
11 Q Why did you tell Mr. Gilles that he could not engage in
12 speech in the west library lawn?
13 A I was following the policy that we had set up for the
14 designated area on campus for solicitation, which would be
15 the brick walkway in front of the union.
16 Q Okay. And looking again at the solicitation policy that
17 states that there is a designated area, the sentence before
18 that states that you can, "notify appropriate university
19 personnel regarding the campus location of a solicitor". Is
20 that correct that the policy reads that?
21 A That's correct.
22 Q Why couldn't you have notified university personnel that Mr.
23 Gilles wanted to use the library lawn as a place for
24 solicitation?

25 A Because that wasn't part of what the policy states.

CROSSROADS COURT REPORTING [38]

1 Q Is there anything on the--could you refer to Exhibit 3?
2 A This?
3 Q Yes, it is the solicitation form Mr. Gilles filled out.
4 A Yes.
5 Q Is there anything on that form that would indicate that Mr.
6 Gilles wanted to engage in solicitation on the campus?
7 A I believe it states here that it would be an open forum.
8 Q An open forum is to me a descriptive word. What is--was
9 there anything that would be--state specifically what Mr.
10 Gilles had intended to do on the campus that day?
11 A It doesn't state here. That's the only words on here on the
12 solicitation request.
13 Q How did you have any knowledge--if there was nothing on the
14 form to indicate that Mr. Gilles wanted to engage in
15 solicitation, how did you know Mr. Gilles was going to
16 engage in solicitation?
17 A In--without knowing exactly what the conversation was, I
18 can't say what we talked about.
19 MS. MURRAY: Would you please mark this as Exhibit 4?
20 (PLAINTIFF'S EXHIBIT 4 MARKED)
21 Q Okay. Thank you. Do you recall this exhibit?
22 A Yes.
23 Q What is this?
24 A This is an affidavit that I had for court.
25 Q Would you turn to page 3, please? Is that your signature?

CROSSROADS COURT REPORTING [39]

A Yes.
Q Did you affirm that this document is true and correct?
A Yes.
Q Would you look at paragraph 5, please?
A I'm not--
Q Line 5, page 1.
A Okay.
Q The fifth line states that, "In order to carry out its mission of education, Vincennes University has adopted a Sales and/or Solicitation Policy which is attached as Exhibit A." Is that correct?
A That's correct.
Q How does the Sales and/or Solicitation Policy advance the educational mission of the university?
A In this case it would be a way for us to be aware of the people on campus, and it would allow us reasonable notice when we're going to have people from the outside groups coming in that weren't invited.
Q Looking back to Exhibit 1--
A This one?
Q Yes. Is the term, invited or uninvited, in that policy?
A No, it's not.
Q How did the term, uninvited and invited, come to be a factor concerning the policy?
A Well, when we wrote it, you know, we wrote that with that

CROSSROADS COURT REPORTING [40]

thought in mind.

2 Q Okay. Was there any reason that you just didn't say policy
3 for outsiders?
4 A No, not that I'm aware of.
5 Q Would you look to paragraph 7 of Exhibit 4? It states that,
6 "Since the adoption of the policy, the open areas of the
7 campus have not been open to outside speakers."
8 A That's correct.
9 Q Why is that the case?
10 A The outside speakers--and, again, the policy states that we
11 would have the designated area in front of the union as that
12 area on campus.
13 MS. MURRAY: Would you mark this as Exhibit 5, please?
14 (PLAINTIFF'S EXHIBIT 5 MARKED)
15 Q Do you recognize Exhibit 5?
16 A Yes.
17 Q Do you need a moment to review it?
18 A Please.
19 (WITNESS EXAMINES DOCUMENT)
20 A Okay.
21 Q Does this letter reference the Gideons group?
22 A Yes.
23 Q Are the Gideons an outside group, or are they a student
24 organization?
25 A They are an outside group.

1 Q In the affidavit that we just referenced, it states that
2 since the passage of the policy, outside groups have not
3 been permitted on campus. This was in paragraph 7 of the
4 affidavit.

5 A They had not been permitted on the open areas; is that what
6 you mean?
7 Q Well, paragraph 7 of the affidavit says outside speakers
8 have not been permitted following the sales or solicitation
9 policy?
10 A Didn't say not permitted. It says not open to outside
11 speakers.
12 Q Okay. Do you know what activity the Gideons are involved in
13 when they visited the campus?
14 A The Gideons pass out Bibles.
15 Q Okay. Do you know where the Gideons pass out Bibles?
16 A There are a couple different locations on campus.
17 Specifically, I don't know.
18 Q Okay. Does the letter specifically identify the area where
19 the Gideons pass out Bibles?
20 A No, it does not.
21 Q Do you know why Scott Shipman was not required to identify
22 the Beckes Student Union brick walkway as the location to
23 pass out Bibles?
24 A As Christian Campus Fellowship is a student organization at
25 Vincennes University, they invited the Gideons on campus to

1 do this, so they were allowed to be on campus.
2 Q Do you know if this sponsorship possibility or option for
3 outside groups was communicated to Mr. Gilles?
4 A I don't remember that.

5 Q Is the possibility of sponsorship set forth in the policy
6 for solicitation?
7 A No, it was not.
8 Q Do you know why it was not?
9 A No.
10 Q How long has there been a practice to allow a student
11 organization to sponsor an outside group?
12 A A practice?
13 Q How long has that been going on?
14 A Student groups have brought people on campus for time. That
15 happens quite a bit.
16 Q Okay. Why weren't the Gideons required to fill out a
17 solicitation form?
18 A They did.
19 Q Were they--did they have to do that--the letter that I just
20 showed you looks as if Scott Shipman was merely notifying
21 you of their visit, so it does not appear to be a
22 solicitation form?
23 A This letter is not a solicitation form, but the Gideons
24 would have been required to fill out one, also. But this
25 form would have verified that they were inviting the Gideons

1 to campus, this letter.
2 Q Do you consider handing out free Bibles solicitation?
3 A Do I--
4 Q Do you consider handing out free Bibles solicitation?
5 A I would not.
6 Q Okay. So why would the Gideons be required to fill out a
7 form if that wouldn't constitute solicitation?

8 A Well, again, it would be an outside group or the possibility
9 of an outside group; but with Christian Campus Fellowship
10 inviting them, then they were able to do the distribution.
11 Q Do you know where the 2003 solicitation form of the Gideons
12 is?
13 A No, I do not.
14 Q That was not something that was provided in the defense
15 disclosures.
16 A I don't know why it wouldn't be in there.
17 Q What activities can an outside group get sponsored for by a
18 student group?
19 A I'm not--
20 Q Okay. You permitted the Gideons to be sponsored to enable
21 them to pass out Bibles. What--
22 A That's not something that I--I mean, the relationship with
23 the Christian Campus Fellowship and the Gideons was not
24 something that I allowed. I mean, that was just something
25 that was formed. But then the Christian Campus Fellowship

1 would invite them here. I guess student groups can invite
2 anyone to campus.
3 Q Do you place any restrictions on who a student group can
4 sponsor to engage in activity on the campus?
5 A We have not.

6 Q Since a location was not specified in the Gideons--for the
7 Gideons in that letter, could the Gideons have passed out
8 Bibles anywhere on campus?
9 A Yes.
10 Q Would that include the library lawn area?
11 A It could.
12 Q Do you know if it did?
13 A I do not know.
14 Q Do you know the exact date the solicitation policy that we
15 looked at as Exhibit 1 was put into effect?
16 A I don't know the exact date. That might be something that
17 we have here on file.
18 Q What is your best recollection of when that occurred?
19 A It seems it was the summer of 2002. Go over the minutes or
20 something.
21 MR. SIEWERS: It was June 26th of '02.
22 MS. MURRAY: Thank you.
23 MR. SIEWERS: Here's the document, if you want.
24 MS. MURRAY: Okay. Thank you.
25 Q I don't recall if you stated whether or not the Gideons

1 filled out a request for 2003 or just if you didn't have
2 that; do you recall?
3 A What I said was I do not recall if they did or not or why it
4 was not there.
5 Q Okay. When were the 2002 solicitation requests discarded?
6 A We would have gotten rid of those at the end of the year.
7 Q Okay.

8 A We usually keep--we kept them through the year, during the
9 school year.
10 Q Are you aware of the letter that your attorney sent to our
11 office in the fall of 2002?
12 A No, I'm not.
13 Q Okay.
14 A No.
15 MS. MURRAY: Can you mark this, please?
16 (PLAINTIFF'S EXHIBIT 6 MARKED)
17 Q Would you read the first line of that letter? And, first of
18 all, would you take a moment to see who signed it?
19 A Uh-huh. Okay.
20 Q Okay. Do you recall reviewing that letter at any point?
21 A I don't remember.
22 Q Would you read the first line?
23 A "Our office represents Vincennes University. I am writing
24 in response to your November 7, 2002 correspondence
25 regarding James Gilles."

1 Q Would you also look on the second page where a courtesy copy
2 was provided to you?
3 A Uh-huh.
4 Q If you were put on notice concerning possible litigation due
5 to Mr. Gilles's 2002 visit, why were the 2002 forms
6 discarded?
7 MR. SIEWERS: I'll object that he was put on--to the
8 characterization that he was put onto notice as to
9 possible litigation, but go ahead and answer.

10 A I don't have a reason why they weren't. We had never kept
11 them before.
12 Q How long would you keep a solicitation?
13 A For the academic school year.
14 Q The academic school year. So that means in May--does that
15 mean in May of 2003 the 2002 forms were discarded?
16 A As a practice, that would be about right.
17 Q Okay. Thank you. Would you refer back to your affidavit
18 that we had looked at a moment ago? I believe that's
19 Exhibit 3.
20 A Hold on here. Yes.
21 Q Would you mind looking at paragraph 17, please?
22 A Yes.
23 Q Paragraph 17 states that the solicitation policy was
24 designed to prevent disruption. Do you know if the term,
25 disruption, appears in the solicitation policy?

1 A I do not see it.
2 Q Does the policy define disruption at all?
3 A No.
4 Q Does the policy discuss solicitation or sales that could be
5 disruptive?
6 A I'm sorry. I didn't hear.
7 Q Does the policy--is there other speech that could become
8 disruptive on campus that may not be sales or solicitation?
9 A Is that started here in this policy?
10 Q Yes.
11 A It is not stated in this policy.
12 Q Okay. Is there any other university policy that addresses
13 disruptive speech?

14 A There would--the student conduct code would address
15 disrupting university events or different things like that.
16 Is that what you are asking?
17 Q I am asking concerning any policy that you're aware of that
18 discusses disruption?
19 A The student conduct code, I know, does.
20 Q Does that address student conduct or outside conduct?
21 A It's a student conduct code.
22 Q Is there any other policy that defines either faculty
23 disruption or outsider disruption?
24 A Not that I'm aware of.
25 MS. MURRAY: Excuse me just a second.

CROSSROADS COURT REPORTING [48]

1 MR. SIEWERS: Can we take about a two-minute break,
2 rest room break?
3 MS. MURRAY: Sure.
4 MR. KELLUM: Sure.
5 (A SHORT BREAK WAS TAKEN)
6 Q The next exhibit I want you to look at, please, is
7 Defendants' Answers to Plaintiff's First Set of
8 Interrogatories. I was wondering maybe if your attorney
9 would have that.
10 MS. MURRAY: Do you know?
11 MR. SIEWERS: Yeah.
12 MS. MURRAY: Thank you.
13 (PLAINTIFF'S EXHIBIT 7 MARKED)
14 Q Okay. Let me take this one back from you. Would you--do
15 you recognize the document you're looking at?
16 A Yes.
17 Q Would you look at page 4, please?
18 A Is that your signature on page 4?
19 A Yes, it is.

20 Q Did you certify that this document is true and correct?
21 A That is correct.
22 Q And what is this document?
23 A This is the interrogatories again regarding questions
24 concerning this case.
25 Q Thank you. Would you look at interrogatory number
12,

CROSSROADS COURT REPORTING [49]

1 please? In interrogatory number 12 you identified
2 individuals, entities and organizations that had engaged in
3 expression on Vincennes University campus over the last
five
4 years who were not sponsored by anyone affiliated with
the
5 university or a student organization registered with
6 Vincennes University; is that correct?
7 A That's correct.
8 Q In your answer you identified in "C" the Gideons as a
group
9 that had engaged in expressive activity without being
10 sponsored?
11 A That is correct.
12 Q What do you recall about the Gideons's visit when they
were
13 not sponsored?
14 A They were asked to stay in front of the student union on
the
15 brick walkway.
16 Q When was the visit of the Gideons prior to them being
17 sponsored by another group?
18 A When was it?
19 Q Please.
20 A It would have been--I don't know for sure. I would say
21 2002.

22 Q Okay. When the Gideons were at the campus in 2003, we just
23 looked at the letter from Scott Shipman. So it would have
24 to be, I would assume, before 2003?
25 A That would be my guess.

CROSSROADS COURT REPORTING [50]

1 Q Okay. When the Gideons were there in what you assume to be
2 2002, or previous--do you think it was 2002, or do you think
3 it's previous to 2002?
4 A I believe they'd been there prior, but 2002 would have been
5 after the new policy came into effect.
6 Q Okay. Were the Gideons there prior to 2002?
7 A They came every year.
8 Q Okay. And what do you recall about the event when the
9 Gideons were on campus in 2002?
10 A I remembered that they contacted our office, and we
11 requested that they stay in front of the union.
12 Q Okay. Did the Gideons fill out a solicitation form in 2002?
13 A I would say they would have.
14 Q Okay. And where do you recall the Gideons handing out
15 Bibles in 2002?
16 A In front of the union.
17 Q Okay. Do you know when in 2002 the Gideons passed out
18 Bibles?
19 A I wouldn't know.
20 Q Okay. Before the passage of the solicitation policy that
21 was marked as Exhibit 1, did the Gideons engage in speech in

22 areas other than the student union and other than the brick
23 walkway at the student union?
24 A When you say engage in speech, do you mean the passing out
25 of the Bibles?

CROSSROADS COURT REPORTING [51]

1 A Yes.
2 Q They would have--prior to the passage, they would have done
3 that in other areas besides the union.
4 Q Were you the one who came up with the idea that the brick
5 walkway should be the designated spot for groups to solicit?
6 A I don't think that was me. That area was brought up or
7 assigned through discussion.
8 Q And what do you recall about that discussion?
9 A We wanted it to be a reasonable place where students would
10 be, and we felt the student union was that reasonable spot.
11 Q And how is the brick--the designated brick walkway in front
12 of the student union more ideal than other areas of campus?
13 A It's not necessarily more ideal. We just felt it was
14 reasonable.
15 Q Okay. Do you think that the student union area--the brick
16 walkway at the student union is more reasonable than the
17 library lawn?
18 A I'm not--
19 Q I'll rephrase that. Do you think that the designated brick
20 walkway in front of the student union is an area that's more

21 suited for speech than the library lawn?
22 A I don't know that it would be more, but it did provide us
23 with some other things as far as being aware. Our campus
24 police is right next door. My office is in the student
25 union. So it seemed to be a reasonable area for us to be

CROSSROADS COURT REPORTING [52]

1 able to use for free speech.
2 Q Do you know what other areas were brought up in the
3 discussion in choosing a location to designate as a place
4 for solicitation?
5 A I really don't remember any other areas that we
discussed.
6 Q Do you know if the west library lawn was discussed as a
7 possible location to engage in speech?
8 A I don't believe it was.
9 MS. MURRAY: Would you mark another exhibit, please?
10 And actually, I only have one copy, also. This is a
11 Verified Complaint.
12 MR. SIEWERS: Your complaint?
13 MS. MURRAY: Yes, our Verified Complaint and then
also
14 your amended answer if you don't mind.
15 MR. SIEWERS: Okay.
16 MS. MURRAY: I'm sorry. I didn't have copies. You can
17 mark mine. Thank you.
18 (PLAINTIFF'S EXHIBIT 8 MARKED)
19 MR. SIEWERS: I have notes on my copy of the
complaint,
20 so--
21 MS. MURRAY: Okay. She marked mine, so he just has
to
22 be able to look at it unless you don't want him--
23 MR. SIEWERS: Yeah, it's fine if John looks at it.
24 MS. MURRAY: Yeah.

25 MR. SIEWERS: I don't necessarily want you to look at

1 it.
2 MS. MURRAY: No, I won't.
3 MR. SIEWERS: Okay.
4 Q Would you turn to paragraph 27 of the complaint?
5 A Okay.
6 Q Paragraph 27 states that, "During the course of the calendar
7 year of 2003, Vincennes University hosted numerous events
8 and expressive activities that could constitute an act of
9 'enticing a person to action.'" And then it goes on to list
10 various events. Next, could we look at the Amended Answer?
11 MS. MURRAY: Could you mark this, also?
12 (PLAINTIFF'S EXHIBIT 9 MARKED)
13 Q Do you recognize the Amended Answer?
14 A Yes.
15 Q Even though your signature is not on the Amended Answer, do
16 you recall approving this document before it was sent to the
17 court?
18 A I remember looking at this, yes.
19 Q Okay. Would you look at paragraph 27--
20 A Yes.
21 Q --of the Amended Answer? It states that, "The defendants
22 admit that numerous events including those listed were held
23 on the Vincennes University campus which were sponsored by
24 students, faculty or staff which could constitute 'enticing

25 a person to action.'" The last sentence states, "The

1 answering defendants have insufficient information
2 concerning the dates." Looking back at the Verified
3 Complaint, could you look again at the Verified
Complaint?
4 A Uh-huh, I've got it.
5 Q Okay. Thank you. Do you know if on page 6, do you
know if
6 Craig Karges filled out a solicitation request when he came
7 onto campus in 2003?
8 A He would not have because he was an invited person. He
was
9 something that the Student Activities Office had booked as
10 an entertainer.
11 Q Okay. Could you say again who sponsored him?
12 A Student Activities.
13 Q Okay. Student Activities Office?
14 A Yes.
15 Q Okay. Could you look at letter "B" under 27, the TB--
16 A TB Rescrenning.
17 Q --Rescreening? Did the rescreening submit a
solicitation
18 request?
19 A That was done through our Health Office. We had a
student
20 who had TB, so it was a service that we were providing
for
21 university students and staff.
22 Q Is that something that--
23 A They would not have filled out a solicitation request.
24 Q Did the students invite them onto campus, or did--
25 A It's--

CROSSROADS COURT REPORTING [55]

1 Q Just a moment, please.
2 A Oh, I'm sorry.
3 Q Did the students invite them, or did the university invite
4 the TB Rescreening to come on campus?
5 A That was actually our Health Office, the university's
Health
6 Office that did that.
7 Q Could you move to letter "C"? That lists the Student
8 Part-Time Job Fair. Did they fill out a solicitation
9 request in 2003?
10 A No, they did not. That was also our Career Center that
did
11 that.
12 Q Moving to "D", The Man Without a Face, testimony
from Rick
13 Bender. Do you know if Rick Bender filled out a
14 solicitation request?
15 A That gentleman was contracted through our Counseling
Office
16 regarding smoking--or not smoking, I guess, so he did not
17 fill out a solicitation.
18 Q Could you look at letter "E", please? It states that
Health
19 Screening was on campus in 2003. Do you know if--do
you
20 know who was the organization behind Health Screening?
21 A I believe that was our student nurses, and they did that
as
22 a part of their practicum or their training, so they would
23 not have filled out a solicitation.
24 Q Could you look at letter "F", please? Ariana Huffington
25 came to campus to speak. Do you know if she was
sponsored

CROSSROADS COURT REPORTING [56]

by someone?
A She was sponsored by the Business and Public Service Division.
Q And, again, was there any request that was filled out?
A No. We--there was not a solicitation request filled out. This was in conjunction with the student activities where they had made application for funding.
Q Would that have been true for A through E that we already looked at that there may be documentation other than solicitation requests for those individuals and groups?
A Mr. Karges and Mr. Bender possibly--well, The Man Without a Face would have been something through Student Activities Office. Karges would have been through the Student Activities Office. The other two would not have been.
Q Could you look at letter "G"? A Dr. Peter DeBene--do you know how to pronounce that?
A No, I don't. I'm sorry.
Q Okay. Was that particular Dr. Peter, was he sponsored by a particular organization?
A Since it's talking about college students and smoking, I'm going to make the assumption it was through our Counseling Office again. And it kind of went along with the timing of the other gentleman, Rick Bender, on the same subject, so I'll say it was--it would have been through our Counseling Office, but I do not know that for sure.

CROSSROADS COURT REPORTING [57]

1 Q Did you go and ask the Counseling Office concerning that
2 prior to coming here today?
3 A Have I asked them specifically about this gentleman?
4 Q Yes.
5 A No.
6 Q Okay. And so where do you--what do you base that statement
7 on?
8 A I'm only basing it on the fact that it says that it's to
9 influence consumers, particularly college students to begin
10 smoking--or about--oh, wait a second. I'm sorry. I misread
11 this. I apologize. It's a nationally recognized author on
12 media literacy, so I don't know where he would have gone. I
13 apologize. I looked at smoking and made an assumption.
14 Q Okay. So if he was not from the Health Department, do you
15 know who sponsored him?
16 A I would not, not without doing some research.
17 Q Okay. Could you look at letter "H", the Manufacturing Job
18 Fair? Do you know who sponsored the Manufacturing Job Fair,
19 if they were sponsored?
20 A I can say that it would be the Career Center or our
21 Placement Office, but that would be a guess.
22 Q Okay. If you would look at "J", the Prentis Hall sales
23 representative came to campus. How did they come about to
24 coming to campus?
25 A I'd have to look. I do not know.

1 Q If you look again to your Amended Answer, it states that in
2 fact that all of these groups you said were sponsored by
3 students, faculty or staff. Did you--
4 MR. SIEWERS: I'll object to that. He didn't say that.
5 I said that.
6 MS. MURRAY: Okay. Are you aware of something
7 different at this point?
8 MR. SIEWERS: It's my belief that they were. I mean, I
9 obviously signed the answer in good faith.
10 A Sure. In looking at these, I could make a guess on what
11 they all are.
12 Q Okay.
13 A The Prentis Hall sales would be bookstore. But, again, I
14 want to be truthful, and I want to make sure that what I'm
15 telling you is, you know, what I know. But it's not
16 uncommon for, you know, the different departments to bring
17 folks in to do sales and things like that.
18 Q Okay. And so what do you believe to have been the group
19 behind Prentis Hall's coming to campus?
20 A I think Prentis Hall is a book company, so my assumption
21 would be the bookstore.
22 Q Okay. Looking at letter "K", there was a Tupperware
23 Multihost Bingo Party. Do you know how they came to campus?
24 A That, I would say is the Generations. Generations is a
25 university organization, and they do Tupperware and bingo

1 sales as a fund raiser for their programs.

2 Q What is Generations?
3 A It's a program--a university program that assists elderly
4 and provides some things for them.
5 Q So Generations is sponsored by the university; is that
6 correct?
7 A Yes. Yes, it's a university department.
8 Q Okay. Next is Kevin Riggins as letter "L". How did
Kevin
9 Riggins come to the campus?
10 A He was sponsored by the Athletic Department. He
spoke
11 against steroid use.
12 Q Would you please look at letter "M"?
13 A Uh-huh.
14 Q Kelly Craig came to the campus in 2003.
15 A Yes.
16 Q How did she come to campus?
17 A Student Activities, through part of the speakers series.
18 Q Thank you. The last one is "N", the Red Cross Blood
Drive.
19 How did the Red Cross come to campus?
20 A Again, through Student Activities and the Student
Center.
21 We've had a longstanding relationship with blood drives
at
22 the university, so they've always been invited to campus
23 through our offices.
24 Q Are they invited twice a year or how many times?
25 A It's three. We have one in September, one in December
and

1 one in February.
2 Q Does someone from the Red Cross call and set up an
3 appointment, or do you call the Red Cross?

4 A We work together to set dates up because we need facilities
5 for a certain amount of time, so we usually, when we set the
6 calendars, we just get together and work out what's the best
7 dates.
8 Q Thank you.
9 A Uh-huh.
10 Q So, again, in all of the list has we just looked at, "A"
11 through "L" in the Verified Complaint, are you aware of any
12 solicitation requests that were filled out for any of those
13 groups?
14 A From Craig Karges through the others?
15 Q Yes.
16 A I mean, is that the ones you're talking about?
17 Q Yes, please.
18 A There would not have been any solicitation requests filled
19 out for those.
20 Q Thank you.
21 MS. MURRAY: Would you please mark this as an exhibit,
22 please?
23 (PLAINTIFF'S EXHIBIT 10 MARKED)
24 MR. SIEWERS: Are we done with these?
25 MS. MURRAY: Yes, thank you. I do have copies of

1 these. Do you want me to hand you one, also?
2 MR. SIEWERS: Sure.
3 Q Okay. Do you recognize this form?
4 A Yes.
5 Q What is this?
6 A This is a Request for Solicitation Approval.

Q Okay. Who made the request for approval?
A The request was made by the Indiana National Guard through
Chief Harold Hensley.
Q What is the location that you approved for this--
A I'm sorry.
Q --just a moment, please--for the solicitation request?
A Sorry. The front of Morris Hall.
Q Why wasn't the Indiana National Guard required to go to the
brick walkway?
A Chief Harold Hensley at that time was our chief of police of
university police, and he invited this group to come on
campus.
Q And, again, is there any sort of policy that explains the
way a group or any person can get sponsorship to come onto
campus?
A No, there is not.
Q Is that just an understanding with university
administration?
A Yes.

CROSSROADS COURT REPORTING [62]

Q Has that been--how long has that been a practice to get
sponsorship through faculty or student organization?
A As far as the utilization for this policy, it would be since
the inception of our new policy.
Q Did student groups sponsor outside organizations before the
solicitation policy?
A Yes, they would have.
Q Did this request occur before or after the solicitation
policy?

10 A This occurred after--are we talking about the new policy?
11 Q Yes.
12 A Yes, it occurred after.
13 Q And in your mind this sponsorship does not violate the
14 policy as far as that all organizations must receive prior
15 approval?
16 A Correct. As I stated, when we put the policy together, we
17 were looking at outside groups to coming in that were not
18 invited by a university group or organization or student
19 staff.
20 Q Okay. And is that your signature on the bottom of this
21 request?
22 A Yes.
23 Q Do you know why it's even necessary to fill out a
24 solicitation request if invited?
25 A It's not necessary, but it's a nice thing that a lot of

1 these folks do just to let us be aware that they're coming
2 on campus.
3 Q Are most student groups consistent in submitting their
4 requests to you?
5 A Yes, they are.
6 Q What percentage would you think aren't--don't provide the
7 courtesy in filling out the request?
8 A If they're looking for money, there's really probably zero
9 because of the grants and things that we do, and we would
10 utilize that basically as a way to know when people are
11 coming. It would be a very small percentage of student
12 groups that wouldn't let us know that they've got somebody
13 coming to campus. A large majority would let us know in

some way or another.
MS. MURRAY: Would you mark this as another exhibit, please?
(PLAINTIFF'S EXHIBIT 11 MARKED)
Q Do you recognize this form?
A Yes.
Q What is this?
A This is another request for solicitation approval.
Q And who made this request?
A Jamie Evans made the request for the group, Women of Essence.
Q Is that your signature on the bottom of the page?

CROSSROADS COURT REPORTING [64]

A Yes, it is.
Q What is the location that you approved for Jamie Evans' group to solicit on campus?
A The location is on campus.
Q So does that include that Jamie Evans's group could have passed out candy in the west lawn of the library?
A That's correct.
Q Was this before or after the solicitation policy?
A This was after.
Q And why wasn't their group required to go to the brick walkway?
A This is a student organization, a recognized club on campus,
and so they had--they had the privilege of campus.
Q They had the privilege of campus?
A This is not an outside group. This is a university-recognized club.
Q And so what did that mean for them?
A It means that they--they had to--since they were going to
sell the candy for--to raise funds, they had to do the

20 request to sell, but they did not have to be restricted to
21 the brick walkway in front of the union.
22 Q Thank you.
23 MS. MURRAY: Could you mark this as an exhibit, please?
24 (PLAINTIFF'S EXHIBIT 12 MARKED)
25 Q Do you recognize this form?

CROSSROADS COURT REPORTING [65]

1 A Yes.
2 Q And what is it?
3 A This is a request for a solicitation approval.
4 Q What is the name of the organization that submitted the
5 request?
6 A It's VUPA.
7 Q Do you know what that stands for?
8 A Vincennes University Professional--I'm sorry--
Vincennes
9 University Paralegal Association.
10 Q Is this your signature on the bottom of the page?
11 A Yes.
12 Q And was this application filled out before or after the
13 policy marked as Exhibit 1?
14 A It would be after.
15 Q Okay. What is the area that you approved for the
paralegal
16 association?
17 A The library and the student union.
18 Q And why was the organization permitted in the library?
Was
19 this inside the library or outside the library?
20 A Since it's February, I would say it's going to be inside.
21 Q Okay.
22 A Again, this is a university-recognized group, student
group.

23 They fill out the solicitation because they were--it was a
24 fund-raising thing where they were selling candy, but
they
25 were able to go out on campus because they were a
recognized

CROSSROADS COURT REPORTING [66]

1 group on campus.
2 Q So that group could have gone outside the library if they
3 had wanted; is that correct?
4 A Yes, yes.
5 MS. MURRAY: Could you mark this, please?
6 (PLAINTIFF'S EXHIBIT 13 MARKED)
7 Q Is this a solicitation request?
8 A Yes, it is.
9 Q And who filled this out?
10 A This was done by Scott Shipman for the Christian
Campus
11 Fellowship.
12 Q Is it your signature on the bottom of the page?
13 A Yes, it is.
14 Q What is the location that you approved?
15 A In front of the library, the dorms, or by Techumseh
Dining
16 Center.
17 Q And why was the Christian Campus Fellowship
permitted in
18 front of the library?
19 A Again, because Christian Campus Fellowship is a
recognized
20 student group on campus, and they were letting us be
aware
21 of what they were doing. But, again, they have the--they
22 can be on campus since they're a recognized student
group.

23 Q Do you consider the activity of Christian Campus Fellowship,
24 which was handing out free items, do you consider that
25 solicitation?

CROSSROADS COURT REPORTING [67]

1 A Well, the handing out of the free items isn't, but they also
2 talk to the students about their organization and weekly and
3 special events. In a sense, they're soliciting for their
4 organization.
5 Q Do you know--what--would you still consider it solicitation
6 if they were handing out free items, but not informing
7 people about their group?
8 A I wouldn't think it would be solicitation. It would just be
9 handing out free stuff.
10 Q Okay. Would they have to fill out a request if they were
11 just handing out free items?
12 A As a student group, they wouldn't, but it's always nice if
13 they do that, again, to inform us what they're doing.
14 Q If Christian Campus Fellowship had just come to campus and
15 read a Bible verse, would you consider that solicitation?
16 A Would you--am I considering Christian Campus Fellowship as
17 an outside group or a student group?
18 Q As a student group?
19 A Okay. And they just came on campus to read a thing of the
20 Bible?
21 Q Yes.

22 A You know, not thinking of a particular passage, just any
23 verse in general?
24 A Sure.
25 Q Would that be considered solicitation?

CROSSROADS COURT REPORTING [68]

1 A I don't see how that could be.
2 Q If an outsider wanted to read a Bible verse on campus, would
3 that be considered solicitation?
4 A If they're going to be an outside group coming in to do that
5 specifically, they would probably need to come by and see me
6 to set up a time or to be--to fill this out. But if they
7 were just going to come and sit down--let me refrain here.
8 Are you saying they're going to come and sit down at a park
9 bench somewhere?
10 Q I'll tell you. I'll tell you.
11 A Okay.
12 Q If an outsider came and stood in the outdoor grounds on
13 campus, read a Bible verse and left, would that be
14 considered solicitation?
15 A I would not think so.
16 Q When would you consider--what would have to be added to
17 reading a Bible verse in order for you to consider that
18 solicitation?
19 A I believe if the person--and, again, with the policy, if the
20 person is speaking to incite a person to action or to

21 persuade in some way, then I would think it would fall under
22 what we perceive as solicitation in our policy.
23 Q You said inciting to action. Are you--were you attempting
24 to define what is deemed solicitation in the policy?
25 A Well, I think that's what I would base it on. I would base

CROSSROADS COURT REPORTING [69]

1 it on what we have in the policy.
2 MS. MURRAY: Okay. Would you mark this, please?
3 (PLAINTIFF'S EXHIBIT 14 MARKED)
4 Q Is this a request for solicitation approval?
5 A Yes, it is.
6 Q Who filled this out?
7 A Demetrius Brooks for BMI.
8 Q Do you know what BMI is?
9 A That's Black Male Initiative, another student group on
10 campus.
11 Q Is this your signature on the bottom of the page?
12 A Yes, it is.
13 Q What is the location that you approved?
14 A It says location.
15 Q And what is the location specified?
16 A Oh, I'm sorry. It says campus. I'm sorry.
17 Q No, you're fine. Why was BMI permitted to go in areas
18 besides the Beckes Student Union brick walkway?
19 A Again, as a student group they--they are not--they don't
20 fall in the same thing as far as an outside group. They're
21 permitted to do that.
22 Q Do you know if BMI was handing out flyers or actually
23 conducting ticket sales?
24 A Here it says they were going to pass out flyers for

25 homecoming. It's a homecoming concert. They did--I don't

CROSSROADS COURT REPORTING [70]

1 think they were selling tickets at that time, but they were
2 notifying students that there would be sales for the
3 concert. This was a fundraiser for the organization.
4 Q And if they were just handing out flyers on this particular
5 occasion, how would that be solicitation?
6 A Well, if they're handing flyers out, I'm sure they're trying
7 to persuade people to come to the concert. But, again, with
8 this as a student group, what they're trying to do is just
9 let us know what they're doing on campus so that we can be
10 aware.
11 MS. MURRAY: Would you mark this, please?
12 (PLAINTIFF'S EXHIBIT 15 MARKED)
13 Q Do you recognize this form?
14 A Yes, I do. It's the Request for Solicitation Approval.
15 Q What is the group that filled out the request?
16 A The Vincennes University Paralegal Association.
17 Q Is this your signature on the bottom?
18 A Yes, it is.
19 Q And what is the location you approved?
20 A The location was for VU campus.
21 Q And what was the reason that you allowed them to be on the
22 VU campus rather than specifically the brick walkway?
23 A Again, the VUPA is a university club recognized by the
24 university. They were--they filled this out because they
25 were selling raffle tickets on a 50/50 as a fund raiser for

CROSSROADS COURT REPORTING [71]

1 their organization, so they were able to be on campus.
2 Q Thank you.
3 MS. MURRAY: Take just a moment, please.
4 (OFF THE RECORD)
5 MR. MURRAY: Would you look at that, please, and mark
6 it?
7 (PLAINTIFF'S EXHIBIT 16 MARKED)
8 Q Do you recognize this request?
9 A Yes, it's another Request for Solicitation Approval.
10 Q And who is the individual group who made the
request?
11 A Evan Rainey through Godare Hall and intramural
sports.
12 Q And what--is Godare Hall a building on university?
13 A I'm sorry. Yes, it's one of the residence halls on
campus.
14 Q And what is the intramural sport program?
15 A It would also be another program that the university has
16 just intramural programs through our P.E. Department.
17 Q Thank you.
18 MS. MURRAY: Could you mark this, please?
19 (PLAINTIFF'S EXHIBIT 17 MARKED)
20 Q Is this a solicitation request?
21 A Yes, it is.
22 Q What is the name of the individual and group who
submitted
23 the request?
24 A The name is Jason Spore. Individual group is Jason
Spore,
25 Brandon Buskirk, and Mahem Clothing.

1 Q Is your signature on the bottom of the page?
2 A Yes, it is.
3 Q What is the location that you approved?

4 A The sidewalk, and it says, "Student union only."
5 Q And were you saying--is this inside--are you saying the
6 sidewalk in front of the student union, or did you give him
7 permission to be inside the student union?
8 A It looks to me here it's the sidewalk in front of the
9 student union only, the brick walkway.
10 Q Okay. Now, in the sales policy, which was Exhibit 1, it
11 states that commercial activity can occur within the
student
12 union?
13 A Yes.
14 Q So did you consider--again, did you consider this
commercial
15 activity within the student union, or do you believe it was
16 a sidewalk where he engaged in speech?
17 A Actually, I think with this one we would have allowed
him
18 either spot; but it was the opening week of school, and
they
19 felt they would be more visible out front.
20 Q And do you know what Mahem Clothing is or any of
the two
21 other men listed?
22 A I don't. I'm sorry.
23 Q Do you know if they're a student group?
24 A I would say that they're not.
25 Q Would you look at this request form, please?

1 MS. MURRAY: Please mark it. Thank you.
2 (PLAINTIFF'S EXHIBIT 18 MARKED)
3 A Yes.
4 Q Do you recognize this form? Is it a request for
5 solicitation?
6 A Yes, it is.

7 Q And what was the name of the individual or group who made
8 the request?
9 A Sarah Nicholas and Jena Grosser for the Kernan and Davis for
10 Indiana Campaign.
11 Q All right. And what type of organization is the Kernan and
12 Davis for Indiana Campaign?
13 A In this particular case what Sarah and Jena were--are
14 university students, and what they were doing was
15 registering students to vote. They were also passing out
16 some things about Kernan and Davis to support them, but the
17 intent here was for voter registration and absentee
18 registration.
19 Q Okay. Do you know if the Davis campaign contacted Sarah for
20 sponsorship?
21 A I do not know.
22 Q Okay.
23 A But I do know that both Sarah and Jena are university
24 students.
25 Q Do you know if the Davis campaign contacted the university,

1 and they informed them about the sponsorship policy?
2 A They did not inform me.
3 Q Do you know if they informed anybody else?
4 A Oh, I'm sorry. Not to my knowledge.
5 (PLAINTIFF'S EXHIBIT 19 MARKED)
6 Q Would you mark this, please? Do you recognize this form?
7 A Yes, I do.

8 Q And what is it?
9 A It is another Request for Solicitation Approval.
10 Q Who made the request?
11 A Cheryl Wilber.
12 Q And is your signature on the bottom of the page?
13 A Yes, it is.
14 Q Do you know who Cheryl Wilber is?
15 A I'm not familiar with Cheryl.
16 Q I noticed you did not circle VU employee or students. Do
17 you have any knowledge of her whatsoever?
18 A I'm familiar with the Babe Store. It is an organization to
19 help clothe needy families. I assume that Cheryl would have
20 been a part of that group and was there to sell caramel
21 apples, hot cider, baskets and raffle to raise money for
22 that.
23 Q Is there a particular store in town that's called the Babe
24 Store?
25 A I think so.

1 Q Okay.
2 A I know that they have done--rented the facilities for other
3 things on campus.
4 Q Okay. What is the location that you approved?
5 A It's the Beckes Student Union in front of the Info Booth
6 which is the Grand Hall right in front of the bookstore, the
7 area that we would allow for sales.
8 Q Okay.
9 MR. SIEWERS: Can we go off the record for just a
10 second?
11 (OFF THE RECORD)

12 MS. MURRAY: Would you mark this next exhibit, please?
13 (PLAINTIFF'S EXHIBIT 20 MARKED)
14 Q Is this a solicitation request?
15 A Yes, it is.
16 Q What is the name of the organization who submitted it?
17 A Indiana National Guard.
18 Q And who is the contact person?
19 A Sergeant First Class Brian Fletcher.
20 Q Does he have a relationship with the university?
21 A He does not.
22 Q Do you know what he does?
23 A I believe he's I'm going to say commanding officer, but
24 would be working here--we have a National Guard Office here
25 in Vincennes, so he would be stationed there.

1 Q Is your signature on the bottom of the page?
2 A Yes, it is.
3 Q What is the location that you approved?
4 A I approved the Beckes Student Union unless sponsored by
5 university group.
6 Q Do you know if that means--do you know--does that mean
7 inside or outside the Beckes Student Union?
8 A They were actually outside.
9 Q Were they outside on the brick walkway?
10 A Yes.
11 Q Do you--is that your writing at the bottom of the note?
12 A No.
13 Q Do you recognize that handwriting?
14 A Yes.
15 Q Whose is that?

16 A That's Pat Cheeks'.
17 Q Okay. And it looks like Pat stated only in front of the BSU
18 unless sponsored by the university?
19 A Uh-huh.
20 Q Do you know what that refers to?
21 A And I will tell you. The previous one was sponsored by
22 Chief Hensley, the previous Indiana National Guard. This
23 was done in August of 2004, and Chief Hensley retired in
24 July of 2004, so he was no longer with the university. They
25 had not made contact with anyone there, and they weren't

1 sure if they had any sponsorship, so we asked them to be in
2 front of the union for this one.
3 Q Did you actually see the booth?
4 A Yes.
5 Q The booth there?
6 A It was just a table, yeah.
7 Q Okay. Thank you.
8 MS. MURRAY: Would you mark that, please?
9 (PLAINTIFF'S EXHIBIT 21 MARKED)
10 Q Do you recognize this document?
11 A Yes.
12 Q What is this?
13 A This is an agreement with our Student Activities Office for
14 a speaker, Rebekka Armstrong.
15 Q Okay. Is this an event that actually occurred?
16 A Yes.
17 Q And do you know what Rebekka was speaking on?
18 A She was speaking regarding HIV and AIDS virus.
19 Q Okay. And the exact title is, "An HIV+ Playboy Playmate

20 Talk About Her Life." Does the university permit speakers
21 to speak on the topic of sexuality?
22 A Yes.
23 Q And could topics on sexuality possibly be disruptive to
24 certain students?
25 A Could be.

CROSSROADS COURT REPORTING [78]

1 Q Okay. Do you know what the purpose was of having Rebekka on
2 campus?
3 A Well, again, this was--this was done through the Student
4 Activities Office. With a lot of our lecture series, we try
5 to help educate students regarding specific things or at
6 least to help them be aware. This is one of those lectures.
7 And the idea is, you know, if they're educated, they can
8 make better choices for themselves.
9 Q Okay. Do you know if this particular lecture was disruptive
10 to any particular students?
11 A I heard nothing but positives regarding this. This was also
12 done at 8:00 at night, so as far as disruptions, it would
13 have been minimal being in the evening.
14 Q Thank you.
15 MS. MURRAY: Would you mark this, please?
16 (PLAINTIFF'S EXHIBIT 22 MARKED)
17 Q Do you recognize this document?
18 A Yes, I do.
19 Q What is this?
20 A This is also a contract that we had with Mark Sterner
21 through our Student Activities Office. Mark was a speaker
22 regarding DUI and drunk driving.

23 Q Do you know if this event actually occurred?
24 A Yes, it did.
25 Q Does the university permit speakers to talk on the issue of

CROSSROADS COURT REPORTING [79]

1 alcohol?
2 A Yes.
3 Q And do they also allow a discussion of alcohol abuse?
4 A Yes.
5 Q Do you think that a discussion of alcohol abuse could be
6 disruptive to some students?
7 A It could be.
8 Q Do you know if this particular lecture was disruptive for
9 any particular student?
10 A I do not know that.
11 Q Okay. You mentioned that there was a solicitation policy
12 prior to 2002--prior to, I believe, June 22nd, 2002. What
13 was that policy?
14 A It was similar in nature to the one that you see there.
15 Q Oh, excuse me. It was June 26th. All right. Go ahead.
16 A I'm sorry. It was similar in nature to what you have there
17 as far as the sales solicited. It was more based on student
18 groups that wanted to go out and do sales or solicitations
19 for raffles, for fund raisers, whatever so that they would
20 notify--at that time prior to actually 2000 it was through
21 the Student Activities Office, and then it came to me, came
22 to the Dean of Students office. But it was more specific to
23 students and student groups.
24 Q Okay. Did it address--did the policy address outside groups
25 at all?

CROSSROADS COURT REPORTING [80]

A Not to my recollection.
Q Okay. What was the major distinctions between the two policies?
A Between the old one and what we see now?
Q Yes.
A The addition of the designated area for speech.
Q Was prior approval required for outside groups and students
and faculty under the old policy?
A Prior approval for sales?
Q Yes.
A And that's really what it addressed. It addressed more sales than anything, and we requested that. That was requested of clubs or organizations if they were going to go
out as VU organization to get prior approval for that.
Q Did the policy also address solicitation for student groups
and outsiders?
A Without reading it, I really don't want--I can't speak on that.
Q Okay. What was the policy for speech for the Gideons prior
to June 26th of '02?
A The practice was that they would notify our office when they
were going to be on campus, and they were allowed to go on
campus to pass out Bibles prior to June 2002.
Q And even though--okay. So the policy that you were describing related specifically to students; is that

CROSSROADS COURT REPORTING [81]

1 correct?
2 A Students and sales.
3 Q Okay.
4 A To the best I can remember, that was the real point of that
5 policy.
6 Q Okay. But--and you said that it was a practice to allow the
7 Gideons to come on the campus, but no official policy?
8 A As far as outside groups coming on?
9 Q Yes.
10 A There was not.
11 MS. MURRAY: Okay. That is all I have. I do
12 appreciate your time.
13 WITNESS: Thank you.
14 MR. SIEWERS: I have a couple clarifications, not too
15 many.
16 CROSS-EXAMINATION
17 By Mr. Siewers:
18 Q She was asking you about whether you allowed certain topics
19 or not. Are there any topics that aren't allowed to be
20 discussed on the VU campus?
21 A No, we've never turned anyone down.
22 Q As far as the development, just to clarify, the development
23 of the solicitation policy that we've discussed extensively
24 today, you testified that you weren't involved in its
25 drafting, but I took that to mean you didn't come up with

1 the language in the policy?
2 A That's correct. That's correct. We all discussed it and

3 what would work or what would be involved, but I was not.
4 Q So you were involved in its development, but as far as the
5 actual words, you didn't write the actual words?
6 A That's correct.
7 Q At one point you made a statement that there hadn't been any
8 solicitation requests that had been approved for
9 solicitation other than on the brick walkway. To what
10 groups were you referring when you made that statement?
11 A I'm sorry. Ask the question again.
12 Q At one point you made a statement that no solicitation
13 requests had been approved for solicitation other than on
14 the brick walkway. To what groups were you referring to
15 when you made that statement?
16 A For the brick walkway, that would just be outside groups,
17 uninvited. Is that what you--I think that's what you mean.
18 Q Sure. So if a group, university group, is inviting an
19 outside group to campus, is it necessary for them to fill
20 out a solicitation request?
21 A It's not--
22 MS. MURRAY: Objection. Leading.
23 WITNESS: I'm sorry.
24 MR. KELLUM: It's clearly leading.
25 MR. SIEWERS: He can say yes or no. I didn't suggest

1 an answer.
2 MR. KELLUM: Sounded like it to me.
3 Q I'll rephrase the question. If a university group invites
4 an outside group to campus, is it required for them to fill
5 out solicitation requests?
6 A No.

7 Q Do they?
8 A Many times they do as a way to make us aware that they'll be
9 on campus. It's more of a courtesy.
10 Q You were asked questions about whether or not you knew what
11 the plaintiff, Mr. Gilles, was going to say when he came to
12 campus in 2002, and you responded that you didn't. Did you
13 understand his purpose for being there?
14 A If I received a call from campus police or whatever else, it
15 would have been because Mr. Gilles had begun speaking. I
16 don't think it would have been because Mr. Gilles was there.
17 Does that make sense? I would have been notified that
18 someone was speaking in the grassy area.
19 Q You were asked questions about whether handing out Bibles
20 was solicitation, and you indicated you didn't believe it
21 was. It is correct, though, that you--
22 MS. MURRAY: Objection. Leading.
23 Q Okay. You indicated that handing out Bibles wasn't
24 solicitation. Did you require the Gideons to fill out a
25 solicitation request in 2002?

1 A I know they would have made contact with us. I believe they
2 would have filled out a solicitation request.
3 Q And do you recall them being present on campus in 2002?
4 A Yes.

Q And where were they?
A In 2002 they were in front of the brick walkway or in front
of the union on the brick walkway because they had not
made--had not been invited by CCF, Christian Campus
Fellowship.
Q You made a statement that other than Reverend Gilles, you
couldn't recall any other outside groups. Did you forget
about the Gideons in making that statement?
A Well, the statement, I think, was that Reverend Gilles was
the first outside group that came uninvited or at least
unannounced. The Gideons were an outside group, but they
always made contact before they came on campus.
Q Okay. You were asked how long it's been a practice that
students and other groups sponsor speakers, and you
indicated you didn't know how long that had taken place, but
it had been quite a while. Can you remember a time since
you've been at the university where speakers weren't
sponsored by members of the campus community?
A I can't. If there was a speaker on campus, it would have
been by an invitation to the university--or to the
university by someone from campus.

CROSSROADS COURT REPORTING [85]

Q And my question is as long as you've been there, those
invitations, that's always been something that has occurred?
A Correct.
MS. MURRAY: That last one was--the last statement
sounded leading to me. It wasn't really a question.

6 MR. SIEWERS: That's fine.
7 Q I guess just to ask the question again then, is there a time
8 since you've been at the university when it wasn't a regular
9 occurrence for members of the campus community to invite
10 outside speakers?
11 A Say it again. Sorry.
12 Q Since you've been at Vincennes University, has there ever
13 been a time that there wasn't a regular occurrence for
14 members of the campus community to invite outside speakers?
15 A No.
16 Q And as far as the exhibits that she showed you where you
17 indicated they were student groups, and different names were
18 listed, and I'm going to try to cut through this without
19 asking about them each individually, but Jamie Evans,
20 Jennifer Blythe, Demetrius Brooks, Evan Rainey, Sarah
21 Nicholas, Jena Grosser, were those individuals all students
22 at the time; their names would have appeared on those forms?
23 A Yes, they were all students at the time they did that.
24 Q And as far as Christian Campus Fellowship, are its members
25 students of the university?

1 A Yes.
2 MR. SIEWERS: That's all the questions I have.
3 MS. MURRAY: I do have one more, please. Just one.
4 REDIRECT EXAMINATION
5 By Ms. Murray:

6 Q Is anyone associated with the Campus Christian Fellowship
7 required to be with the Gideons when they are handing out
8 Bibles on campus?
9 A No.
10 MS. MURRAY: Okay. That is it.
11 MR. KELLUM: Thank you very much.
12 MS. MURRAY: Thank you.
13 * * * * * * *
14 DEPOSITION CONCLUDED
15 * * * * * * *
16
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CROSSROADS COURT REPORTING [87]

1 STATE OF INDIANA)
) SS:
2 COUNTY OF VIGO)
3 I, Renee R. Dobson, a Notary Public in and for said
4 county and state, do hereby certify that the deponent herein was
5 by me first duly sworn to tell the truth, the whole truth and
6 nothing but the truth in the aforementioned matter;
7 That the foregoing deposition was taken on behalf of
8 the Plaintiff; that said deposition was taken at the time and
9 place heretofore mentioned;
10 That said deposition was taken down in Stenograph

notes and afterwards reduced to typewriting under my direction
and that signature was waived; and that the typewritten transcript is a true and accurate record of the testimony given
by said deponent;
I do further certify that I am a disinterested person
in this cause of action; that I am not a relative or attorney of
any of the parties, or otherwise interested in the event of this
cause of action, and am not in the employ of the attorneys for
any of the parties.
IN WITNESS WHEREFORE, I have hereunto set my hand and
affixed my notarial seal this 4th day of March, 2005.

/s/Renee R. Dobson, RMR
Renee R. Dobson, Notary Public,
Residing in Vigo County, Indiana
My Commission Expires: September 1, 2007

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	**CAUSE NO.:_____**
	)	
BRYAN K. BLANCHARD, in his official capacity of President of Vincennes University, and JOHN LIVERS, individually and in his official capacity of Dean of Students for Vincennes University,	)	
	)	
DEFENDANTS.	)	

AFFIDAVIT OF JAMES G. GILLES

STATE OF KENTUCKY
COUNTY OF BOONE

1. I am James G. Gilles, Plaintiff in the lawsuit styled above and submit this Affidavit on my own behalf.

2. I am a professing Christian. As a tenet of my faith, I travel to public universities all over the country and communicate a religious message in areas where I have access to significant numbers of college students.

3. I typically speak on topics of sin, repentance, holiness, and judgment to come, addressing the propriety of certain behavior that I believe to be customary for some

college students today, including drug abuse, alcohol abuse, and promiscuous sexual activity.

4. I encourage dialogue and intellectual discussions about these matters and other moral issues of the day. This discourse is coupled with a message about my Christian faith.

5. On August 29, 2002, I attempted to speak in an area I thought to be uniquely public, situated in the center of the campus of Vincennes University. It is a free speech area located along the main walkway that runs through the campus. In this particular area, I know from past experience that off-campus speakers are allowed to speak pursuant to campus rules, and where I was allowed to speak the year prior, without any interruption.

6. However, on this date, I was stopped by a campus security officer for Vincennes University, who required that I to go to the Dean of Students' office to "register" my speech.

7. I met with John Livers ("Mr. Livers"), the Dean of Students at Vincennes University, about my speech on campus. Mr. Livers told me I would need to register my speech.

8. Mr. Livers also required me to go to the "brick walkway," an area located on the periphery of the campus of Vincennes University. For reason, Mr. Livers told me that my speech purportedly fell under the recently adopted "Sales and/or Solicitation Policy." Mr. Livers concluded that religious speech would entice a person to action.

9. Thereafter, I attempted to speak in the "brick walkway," but I found this effort to be futile. Very few students were found there. Hence, I did not have an audience.

10. I also had difficulty being heard in the "brick walkway" area due to the ambient noise in the vicinity. The "brick walkway" is adjacent to a busy public street part of a

three-way intersection used by vehicular traffic making the background noise very loud.

11. As a result of the futility of my speech in the "brick walkway" area, I left the area and have not returned to Vincennes University. I have not attempted to speak in the open areas of the campus since my visit in August of 2002 for fear of arrest.

12. I do not consider my desired expressive activity to be "solicitation." I do not attempt to ask or try to obtain anything for myself or any organization. I make no effort to sell any services or products. And, I make no attempt to encourage anyone to join any organization. I do not seek seek any personal gain from my discussions.

13. I share my religious message because of a firm religious conviction to "share the gospel." In my faith, this means the good news about Jesus Christ.

/s/James G. Gilles
JAMES G. GILLES

STATE OF Kentucky
COUNTY OF Boone

On this 1st day of April, 2004, before me, a Notary Public of the State and County aforesaid, personally appeared James G. Gilles to me known (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he executed the foregoing instrument for the purpose therein contained.

/s/Sharon Oliver
Notary Public

My Commission Expires:
2/27/07

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No.: 204-
	)	CV-083-LJM-WGH
	)	
BRYAN K. BLANCHARD, et al.,	)	
	)	
Defendants.	)	

SECOND AFFIDAVIT OF JAMES G. GILLES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, JAMES G. GILLES, hereby swear and depose as follows:

1. I am competent and of legal age.

2. I am a resident of Symsonia, Kentucky.

3. I seek to engage in public speaking, individual discussions with students, and leafleting on the campus of Vincennes University ("VU").

4. I visited the campus of VU in 2001 and on August 29, 2002.

5. On August 29, 2002, students with a Christian student organization passed out free watermelon and flyers from the main walkway in front of the Learning Resources Center.

6. The tables holding the watermelon and supplies of the Christian student organization were located in the open area in front of the Learning Resources Center.

7. One student with the Christian student organization held up a sign offering free watermelon.

8. The main walkway in front the Learning Resources Center, which abuts the open area where I attempted to speak on August 29, 2002, is connected to the sidewalks that run through the VU campus and connects to sidewalks of the City of Vincennes.

9. Attached to this affidavit, as Exhibit A, are pictures of the VU campus.

10. Picture 1 of Exhibit A is a true and correct copy of a picture that I took at VU on August 29, 2002 of students with a Christian student organization passing out free watermelon and flyers from the main walkway in front of the Learning Resources Center.

11. Picture 2 of Exhibit A is an accurate depiction of the Learning Resources Center and the open area across from the Center where I engaged in speech in 2001 and attempted to engage in speech on August 29, 2002.

12. Pictures 3 and 4 of Exhibit A are accurate depictions of the open area across from the Learning Resources Center, which is the west library lawn area where I engaged in speech in 2001 and attempted to engage in speech on August 29, 2002.

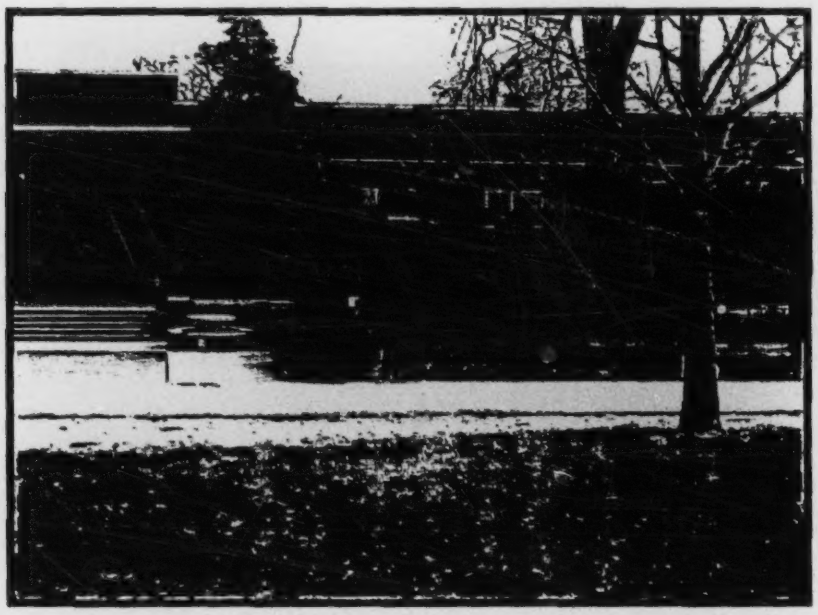
13. Pictures 5 and 6 of Exhibit A are accurate depictions of the designated brick walkway in front of Beckes Student Union at VU, where I was restricted to engage in speech.

EXHIBIT A

Picture 1 – Christian Student Organization in front of Learning Resources Center

BEST AVAILABLE COPY

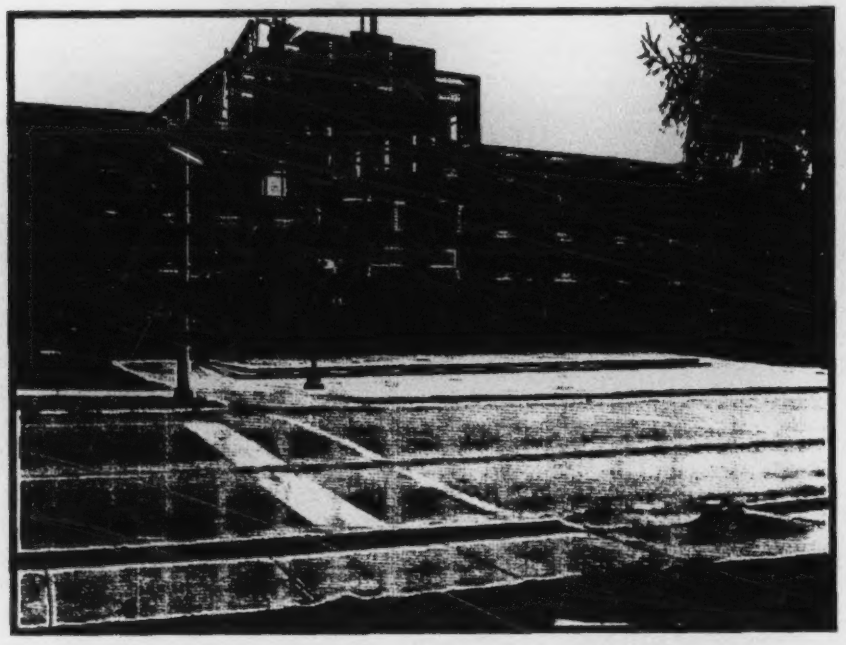
Picture 2 – Open Area Across from Learning Resources Center
(West Library Lawn)



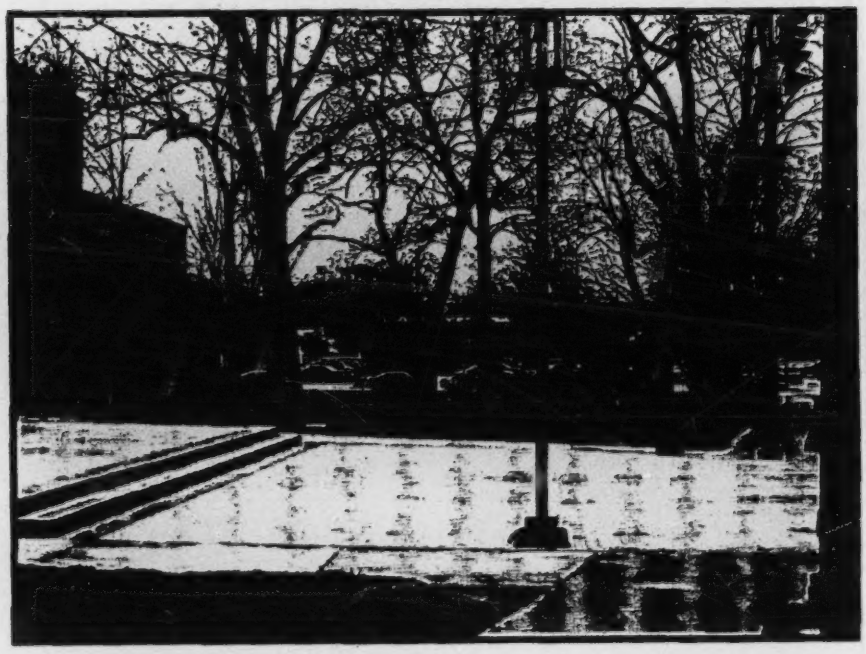
Picture 3 – Open Area Across from Learning Resources Center
(West Library Lawn)

Picture 4 – Open Area Across from Learning Resources Center
(West Library Lawn)

Picture 5 – Designated Brick Walkway at Beckes Student Union



Picture 6 – Designated Brick Walkway at Beckes Student Union



DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Affidavit and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 12 day of July, 2005 in Symsonia, Kentucky,

By: /s/James G. Gilles
James G. Gilles

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)
	)
Plaintiff,	)
	)
v.	) Cause No.:
	) 204-CV-083-LJM-
	) WGH
	)
BRYAN K. BLANCHARD, et al.,	)
	)
Defendants.	)

AFFIDAVIT OF JOHN E. DUNCAN IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, JOHN E. DUNCAN, hereby swear and depose as follows:

1. I am a resident of Athens, Georgia.
2. I am competent and over the age of majority.
3. In August of 1998, I visited Vincennes University ("VU") in Vincennes, Indiana, along with my wife, Ellen Duncan.
4. Upon arrival at VU, Ellen and I went to the open area in the west library lawn and engaged in religious speech from about 11:30 a.m. to 4:00 p.m.
5. While at VU, Ellen and I preached to students, engaged in religious discussions, and answered the questions of students.
6. A crowd of about 70 students gathered to hear Ellen and me preach.

7. A number of students engaged in religious discussions with us.
8. A Catholic campus pastor joined us in the open area and engaged in religious speech with students for about one hour.
9. While Ellen and I engaged in religious speech, two police officers came to the open area and observed our religious speech for some of the time that we were there.
10. Ellen and I were not approached by any police officer or VU official while we were at VU.
11. Attached to this affidavit, as exhibit A, is a true and correct copy of a picture of me preaching in the open area at VU in August of 1998.

EXHIBIT A

BEST AVAILABLE COPY

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Affidavit and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 12 day of July, 2005 in Athens, Georgia,

By: /s/John E. Duncan
John E. Duncan

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)
	)
Plaintiff,	)
	)
v.	) Cause No.:
	) 204-CV-083-LJM-
	) WGH
	)
BRYAN K. BLANCHARD, et al.,	)
	)
Defendants.	)

AFFIDAVIT OF JOHN LIVERS

Being duly sworn, John Livers disposes and states as follows:

1. I, John Livers, am a defendant in this lawsuit and submit this Affidavit based on my personal knowledge.

2. I am the Dean of Students at Vincennes University.

3. Vincennes University is a public, statewide, state supported college created by the Indiana state legislature.

4. The main campus of Vincennes University is in Vincennes, Indiana.

5. In order to carry out its mission of education, Vincennes University has adopted a Sales and/or Solicitation Policy which is attached as Exhibit A.

6. On or about August 29, 2002, Mr. James G. Gilles began speaking along a walkway that runs through the campus of Vincennes University.

7. Since the adoption of the Sales and/or Solicitation Policy, the open areas of the campus of Vincennes University have not been open to outside speakers.

8. On August 29, 2002, Harold Hensley, the Chief of the Vincennes University Police informed Mr. Gilles that he was not permitted to carry out his speech in the area he was located and needed to fill out a solicitation request with the Dean of Students.

9. In 2001, Mr. Gilles attempted to speak in this area, and he was eventually asked to leave due to the disruption he created and the fact that campus police feared for his safety. Mr. Gilles complied with the request and left.

10. Mr. Gilles met with me on August 29, 2002, filled out a solicitation request and was permitted to carry on his speech in the designated area on campus for that activity.

11. Vincennes University has allowed students, faculty and staff to invite outside entities and groups to "speak" on the Vincennes University campus. Any invitations extended by student groups, student organizations, or the Student Affairs Department are monitored by the Dean of Students.

12. Since the adoption of the Sales and/or Solicitation Policy, no uninvited outside speakers or groups have been permitted to "speak" on the Vincennes University campus other than the designated area in front of the Beckes Student Union.

13. Commercial entities have been permitted to sell products and services inside the Beckes Student Union.

14. These commercial entities have been allowed inside the Beckes Student Union because an outside location is often not conducive to the selling of products and services and because their presence in the Beckes Student Union is consistent with the purpose of that building which is the provision of products and services to students in a safe environment. The presence of non-commercial activists would not be conducive to this purpose.

15. No uninvited outside persons or entities engaged in non-commercial speech have been permitted to speak inside the Beckes Student Union.

16. Since the adoption of the Sales and/or Solicitation Policy, no outside non-commercial persons or entities have been denied permission to speak in the designated area.

17. The Sales and/or Solicitation Policy of Vincennes University was designed to promote the educational mission of Vincennes University by reserving its campus for educational purposes and preventing disruption of the day-to-day operations of the campus community.

I affirm under the penalties for perjury that the foregoing representations are true and correct.

/s/John Livers 7/16/04
John Livers

STATE OF INDIANA)
) SS:
COUNTY OF KNOX)

Before me, the undersigned, a Notary Public in and for said County and State, this 16th day of July, 2004, personally appeared John Livers and acknowledged this to be his voluntary act and deed.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: /s/Daniel L. Siewers
Daniel L. Siewers, Notary Public
07/06/09 Residing in Knox County, State of Indiana

EXHIBIT A

Sales and/or Solicitation Policy

The Board of Trustees has adopted the following policy governing sales and solicitation on the Vincennes University campus.

Vincennes University requires prior approval for all sales on campus by any person or organization. An individual or organization that represents or uses the name of the University must also obtain approval for sales off-campus. The Dean of Students will retain the right of approval of the product or activity as well as the date, time, and location of the sales. If the use of buildings other then (sic) the Student Union is requested, additional approval must be obtained from the respective building supervisors. Partnerships with the University will be encouraged while direct competition with vendors of which the University has an agreement will be discouraged. Sales is defined as the exchange of property or services for a determined amount of money or its equivalent.

Vincennes University also requires approval for all solicitations on campus by any person or organization. Again, the Dean of Students will approve the date and time of the solicitation. He will also notify the appropriate University personnel regarding the campus location for the solicitor. The designated area on campus for solicitation is the brick walkway directly in front of the Beckes Student Union. Solicitation is the act of seeking to obtain by persuasion; to entice a person to action; or the recruiting of possible sales.

All policies of Vincennes University as well as all local, state, and Federal law will be observed.

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)
	)
Plaintiff,	)
	)
v.	) CASE NO.:
	) 204-CV-083LJM-
	) WGH
	)
BRYAN K. BLANCHRD, in his	)
Official capacity of President of	)
Vincennes University, and	)
JOHN LIVERS, individually and in	)
his official capacity of Dean of	)
Students for Vincennes University	)
	)
Defendants.	)

AMENDED ANSWER

COMES NOW the defendants, by counsel, and pursuant to Federal Rules of Civil Procedure 15(a) file their Amended Answer to the Complaint of the plaintiff as follows:

1. The defendants admit the allegations contained in rhetorical paragraph 1.

2. The defendants state that the Complaint speaks for itself and hereby deny all material allegations contained in rhetorical paragraph 2 which are otherwise inconsistent with the Complaint.

3. The defendants deny the material allegations contained in rhetorical paragraph 3.

4. The defendants admit that any act or omission by them relevant to this lawsuit which in fact occurred, took place as part of their employment with Vincennes University. The defendants deny all other allegations contained in rhetorical paragraph 4.

5. The defendants admit the allegations contained in rhetorical paragraph 5.

6. The defendants admit the allegations contained in rhetorical paragraph 6.

7. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 7 and therefore deny the same.

8. The defendants admit that Bryan K. Blanchard was President of Vincennes University at the time in question and was responsible in his official capacity for carrying out the policies and procedures of Vincennes University. The defendants deny that Bryan K. Blanchard is currently the President of Vincennes University.

9. The defendants admit that John Livers is and was at all times relevant hereto the Dean of Students at Vincennes University and was responsible for overseeing the Sales and/or Solicitation Policy of the University. The defendants deny all other material allegations contained in rhetorical paragraph 9.

10. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 10 and therefore deny the same.

11. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 11 and therefore deny the same.

12. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 12 and therefore deny the same.

13. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 13 and therefore deny the same.

14. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 14 and therefore deny the same.

15. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 15 and therefore deny the same.

16. The defendants have insufficient information to form a belief as to the allegations contained in rhetorical paragraph 16 and therefore deny the same.

17. The defendants admit that on August 29, 2002, Mr. Gilles attempted to "speak" on the Vincennes University campus. The defendants admit that Mr. Gilles attempted to "speak" on the Vincennes University campus the prior year. The defendants admit that the location where Mr. Gilles attempted to speak is near the center of the campus and is near a main walkway. The defendants deny that Mr. Gilles "was allowed to speak the year prior without interruption." The defendants deny that the location where Mr. Gilles attempted to speak is a "free speech area" and deny that it is an area where outside speakers are allowed to speak pursuant to campus rules. The defendants have insufficient information to form a belief as to all other material allegations contained in rhetorical paragraph 17 and therefore deny the same.

18. The defendants admit that Mr. Gilles was asked to leave the area in which he was attempting to speak by a campus security officer and that the security officer suggested to Mr. Gilles that he take the matter up with the Dean of Students. The defendants deny all other material allegations contained in rhetorical paragraph 18.

19. The defendants admit the allegations contained in rhetorical paragraph 19.

20. The defendants admit that Mr. Livers advised Mr. Gilles that that "Sales and/or Solicitation Policy" of Vincennes University was applicable to him, that he needed to fill out a solicitation request, and that the designated area for solicitation was the "brick walkway" in front of the Student Union. The defendants admit that the "brick walkway" adjoins a city street. The defendants deny that the speech of Mr. Gilles was "relegated" to the "brick walkway" and that the "brick walkway" is located on the periphery of the campus of Vincennes University. The defendants deny any other material allegations contained in rhetorical paragraph 20.

21. The defendants deny the material allegations contained in rhetorical paragraph 21.

22. The defendants deny the material allegations contained in rhetorical paragraph 22.

23. The defendants admit that the "brick walkway" is adjacent to a public street at a three-way intersection with another street. The defendants deny all other material allegations contained in rhetorical paragraph 23.

24. The defendants admit that the Sales and/or Solicitation Policy of Vincennes University is set out in rhetorical paragraph 24 and that Dean Livers administered the Policy with respect to Mr. Gilles. The defendants deny that the "brick walkway" is located on the periphery of the campus. The defendants deny that Mr. Gilles was forced to leave the open area of the campus as he was permitted to speak on the brick walkway which is an open area of the campus. The defendants deny any other material allegations contained in rhetorical paragraph 24.

25. The defendants admit the allegations contained in rhetorical paragraph 25.

26. The defendants deny the allegation that Mr. Gilles "does not seek any person to act." The defendants have insufficient information to form a belief as to whether

Mr. Gilles seeks for persons "to believe" and therefore denies the same.

27. The defendants admit that numerous events including those listed were held on the Vincennes University campus which were sponsored by students, faculty, or staff which could constitute "enticing a person to action." The answering defendants have insufficient information to form a belief as to whether all of the dates listed are correct and therefore deny that all dates are accurate.

28. The defendants admit that the events listed were designed to "entice a person to action." The defendants have insufficient information to form a belief as to whether any of the events occurred on the "brick walkway." The defendants deny that Mr. Gilles speech was "relegated" to the "brick walkway." The defendants deny any other material allegations contained in rhetorical paragraph 28.

29. The defendants deny the material allegations contained in rhetorical paragraph 29.

30. The defendants deny the material allegations contained in rhetorical paragraph 30.

31. The defendants deny the material allegations contained in rhetorical paragraph 31.

WHEREFORE, the defendants pray that the plaintiff take nothing by way of his Complaint, that a judgment be entered denying all relief requested by the plaintiff, and for all other relief just and proper in the premises.

Respectfully submitted,

BRYAN K. BLANCHARD, in
his official capacity of President of Vincennes University, and JOHN LIVERS, individually and in his official capacity of Dean of Students of Vincennes University

By: /s/Daniel L. Siewers
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FIRST AFFIRMATIVE DEFENSE

COMES NOW defendants, and for their first affirmative defense state that the plaintiff's Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the defendants pray that the plaintiff's Complaint be dismissed and for all other relief just and proper in the premises.

Respectfully submitted,

BRYAN K. BLANCHARD, in
his official capacity of President of Vincennes University, and JOHN LIVERS, individually and in his official capacity of Dean of Students of Vincennes University

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served this 28th day of June 2004, via First Class United States Mail, postage prepaid, upon:

Mr. Nathan W. Kellum
Center for Inalienable Rights
2749 Lombardy Avenue
P.O. Box 11159
Memphis, Tennessee 38111

/s/Daniel L. Siewers
Daniel L. Siewers

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. GILLES,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	CAUSE NO.:
	)	
BRYAN K. BLANCHARD, in his official capacity as President of Vincennes University, and JOHN LIVERS, individually and in his official capacity as Dean of Students at Vincennes University,	)	
	)	
DEFENDANTS.	)	

VERIFIED COMPLAINT

Comes now Plaintiff James G. Gilles, and for his cause of action against Defendants named herein, avers the following:

INTRODUCTION

1. This is a civil rights action brought by Plaintiff James G. Gilles seeking injunctive relief, declaratory relief, and damages, pursuant to 42 U.S.C. §§1983 and 1988, against Defendants Bryan K. Blanchard, in his official capacity as President of Vincennes University

and John Livers, individually and in his official capacity as Dean of Students at Vincennes University.

2. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights by Defendants named herein, namely, rights to free speech, free exercise of religion, due process and equal protection.

3. The Defendants' actions have deprived and will continue to deprive Plaintiff James G. Gilles of his paramount rights and guarantees provided under the United States Constitution.

4. Each and every act of Defendants alleged herein were committed by Defendants, both of them, under the color of state law and authority.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§1331 and 1343. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

6. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. §1391(b), because the claims arise in this district and Defendants reside in this district.

PLAINTIFF

7. Plaintiff James G. Gilles ("Mr. Gilles") resides in Florence, Kentucky.

DEFENDANTS

8. Defendant Bryan K Blanchard ("Mr. Blanchard") is President of Vincennes University. In his official capacity, among other duties, Mr. Blanchard is responsible for carrying out the policies and procedures of Vincennes University.

9. Defendant John Livers ("Mr. Livers") is Dean of Students at Vincennes University. In his official capacity,

among other duties, he is charged with administering the application process for expressive activities on the campus of Vincennes University.

FACTS

10. Mr. Gilles is a Christian and a campus speaker for his religious faith and beliefs. As a tenet of his faith, Mr. Gilles believes he is discharging a duty to God in publicly proclaiming and communicating his faith and convictions.

11. In order to discharge this duty, Mr. Gilles travels to public universities all over the country and speaks in areas where he has access to significant numbers of college students. He stands on public ways and peacefully communicates a religious message emanating from what he firmly believes to be the word of God, the Bible.

12. Mr. Gilles desires to share his message on college campuses because of what he deems to be a moral obligation to obey God's call on his life, as well as his concern for college students. Mr. Gilles started speaking full-time on college campuses in August of 1982. Since that time, he has visited and spoken on 328 college campuses in forty-nine states and in six different countries.

13. Mr. Gilles does not use electronic amplification, but bare throat. He has no intent to physically touch or harass anyone, or encourage violence, or to express himself in any way other than in a peaceful manner. Mr. Gilles also has no intent to encroach upon private property of any person or entity, nor engage in speech activities in any area other than the public areas of the college campus.

14. In his attempt to reach college students with his message, Mr. Gilles typically speaks on topics of sin, repentance, holiness, and judgment to come. Mr. Gilles attempts to address certain behavior that he believes is customary for some college students, including drug abuse, alcohol abuse, and sexual activity, and speaks on the propriety of such activity in light of Biblical mandates. After

which, Mr. Gilles usually focuses on a message which involves belief in his Christian faith.

15. During the course of these visits, Mr. Gilles encourages dialogue and intellectual discussions on these moral issues of the day. His hope is that those who hear him will embrace his faith.

16. Mr. Gilles makes no effort to sell any services or products during his expressive activities. Neither does Mr. Gilles seek any personal gain from his discussion. He is compelled to share his religious message because of a religious conviction.

17. On August 29, 2002, Mr. Gilles attempted to speak in an uniquely public area in the center of the campus of Vincennes University, a free speech area that is situated along the main walkway that runs through the campus, for the purpose of sharing his religious beliefs. This is an area where outside speakers are allowed to speak pursuant to campus rules, and where Mr. Gilles was allowed to speak the year prior without interruption.

18. Yet, on this date, Mr. Gilles was stopped by a campus security officer who required Mr. Gilles to go to the Dean of Students' office so as to "register" his speech.

19. Mr. Gilles complied with the officer's request, and eventually met with the Dean of Students at Vincennes University, Mr. Livers, about the propriety of his speech on campus.

20. Mr. Livers advised Mr. Gilles that his speech fell under the recently adopted "Sales and/or Solicitation Policy" which would require Mr. Gilles to register his speech and caused his speech to be relegated to the "brick walkway" located on the periphery of the campus of Vincennes University, along side city property.

21. The expressive activity sought by Mr. Gilles does not classify as "solicitation," as this term is ordinarily understood. Mr. Gilles does not attempt to ask or try to obtain something for himself or any organization.

22. The place where Mr. Gilles was required to move, the "brick walkway," is unsuitable for Mr. Gilles' speech. This area deprives Mr. Gilles of his intended audience since it is located on the periphery of the campus and very few students are found there.

23. Additionally, the "brick walkway" where Mr. Gilles is forced to speak is not suited for oratory activity due to the fact that it is adjacent to a busy public street that is part of a three-way intersection designed for and used by vehicular traffic. The background noise in this area places an undue burden on Mr. Gilles' capacity to speak and be heard.

24. The "Sales and/or Solicitation Policy" relied upon by Mr. Livers in forcing Mr. Gilles to leave the open areas of the campus, and speak on the brick walkway on the periphery of the campus, reads as follows:

> Sales and/or Solicitation Policy
>
> The Board of Trustees has adopted the following policy governing sales and solicitation on the Vincennes University campus.
>
> Vincennes University requires prior approval for all sales on campus by any person or organization. An individual or organization that represents or uses the name of the University must also obtain approval for sales off-campus. The Dean of Students will retain the right of approval of the product or activity as well as the date, time, and location of the sales. If the use of buildings other then (sic) the Student Union is requested, additional approval must be obtained from the respective building supervisors. Partnerships with the University

> will be encouraged while direct competition with vendors of which the University has an agreement will be discouraged. Sales is defined as the exchange of property or services for a determined amount of money or its equivalent.
>
> Vincennes University also requires approval for all solicitations on campus by any person or organization. Again, the Dean of Students will approve the date and time of the solicitation. He will also notify the appropriate University personnel regarding the campus location for the solicitor. The designated area on campus for solicitation is the brick walkway directly in front of the Beckes Student Union. Solicitation is the act of seeking to obtain by persuasion; to entice a person to action; or the recruiting of possible sales.
>
> All policies of Vincennes University as well as all local, state, and Federal law will be observed.

25. As interpreted by Vincennes University, and its representatives, Mr. Gilles' speech constitutes "solicitation" because of the determination that Mr. Gilles' speech is used "to entice a person to action."

26. Mr. Gilles does not seek any person to act, but to believe.

27. During the course of the calendar year of 2003, Vincennes University hosted numerous events and expressive activities that could constitute as an act "enticing a person to action." These events include the following:

a. Mentalist Craig Karges - January 16, 2003. According to public information on Craig Karges, he "baffles, mystifies and thoroughly entertains his audience and then, at the end of the presentation, when he has them in the palm of his hand, he delivers a powerful motivational message concerning the potential of the human mind." This is an act enticing persons to think in a positive manner.

b. TB Re-Screening - January 21, 2003. Testing and result reading. This is an act enticing persons to be tested for tuberculosis.

c. Student Part Time Job Fair - January 23, 2003. This is an act enticing persons to finding a part-time job.

d. The Man Without a Face - January 23, 2003. Testimony from Rick Bender who was diagnosed with oral cancer and lost half of his jaw, part of his tongue, and partial use of his right arm at the age of 26 due to him chewing tobacco at the age of 12. This is an act enticing persons to refrain from chewing tobacco or other tobacco use.

e. Health Screening - February 23, 2003. This is an act enticing persons to have various health tests performed.

f. Ariana Huffington - February 25, 2003. A nationally acclaimed columnist, author and political commentator. This is an act enticing persons to embrace a certain political viewpoint.

g. Dr. Peter DeBenedittis - February 27, 2003. "Peter [D.] is a nationally recognized authority on media literacy; he is a very entertaining speaker who will point out how the media manipulates and uses our self-image in order to influence consumers, particularly college students, to begin smoking." This is an act enticing persons to refrain from smoking cigarettes.

h. Manufacturing Job Fair - February 26, 2003. This is an act enticing persons to get a manufacturing job.

i. Amanda Persinger - March 27, 2003. This is an act enticing persons to enter into the pharmaceutical industry.

j. Prentis Hall Sales Representative - March 27, 2003. Sales representative displaying new publications. This is an act enticing persons to purchase certain publications.

k. Tupperware Multihost Bingo/Party - April 9, 2003, May 13, 2003. This is an act enticing persons to buy Tupperware.

l. Kevin Riggins - April 25, 2003. This is an act enticing persons to refrain from taking performance-enhancing drugs.

m. Kelly Craig - October 2, 2003. Kelly Craig is a college student who was hit and seriously injured by a drunk driver. This is an act enticing persons to refrain from drinking and driving.

n. Red Cross Blood Drive - December 8, 2003. This is an act enticing persons to give blood.

28. All of the acts listed above "entice a person to action," yet, none of these activities were relegated to the "brick walkway," as was Mr. Gilles' speech.

CAUSE OF ACTION

29. The promulgation and enforcement of "Sales and/or Solicitation Policy" of Vincennes University that serves to bar Mr. Gilles from speaking on open areas of the campus of Vincennes University, and relegates the individual religious speech of Mr. Gilles to the "brick walkway" on the periphery of the campus, acts as an unconstitutional restriction on Mr. Gilles' speech. This requirement is unconstitutionally vague, overbroad and discriminatory on its face, and as construed and applied to

the individual speech of Mr. Gilles, in violation of freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

30. The promulgation and enforcement of "Sales and/or Solicitation Policy" of Vincennes University that serves to bar Mr. Gilles from speaking on open areas of the campus of Vincennes University, and relegates the individual religious speech of Mr. Gilles to the "brick walkway" on the periphery of the campus, precludes Mr. Gilles from furthering a tenet of his religious faith. This requirement is unconstitutionally vague, overbroad and discriminatory on its face, and as construed and applied to the individual speech and religious activity of Mr. Gilles, in violation of free exercise of religion under the First and Fourteenth Amendments to the United States Constitution.

31. The promulgation and enforcement of "Sales and/or Solicitation Policy" of Vincennes University that serves to bar Mr. Gilles from speaking on open areas of the campus of Vincennes University, and relegates the individual religious speech of Mr. Gilles to the "brick walkway" on the periphery of the campus, fails to adequately notify Mr. Gilles that his expressive activity would be in violation of this provision. This requirement is unconstitutionally vague, overbroad and discriminatory on its face, and as construed and applied to the individual speech of Mr. Gilles, in violation of due process under the Fourteenth Amendment to the United States Constitution.

32. The promulgation and enforcement of "Sales and/or Solicitation Policy" of Vincennes University that serves to bar Mr. Gilles from speaking on open areas of the campus of Vincennes University, and relegates the individual religious speech of Mr. Gilles to the "brick walkway" on the periphery of the campus, acts as an unconstitutional restriction on Mr. Gilles's speech. Mr. Gilles and his speech is treated differently from similarly situated individuals and speech on the basis of the content of

the speech and viewpoint. This requirement is unconstitutionally vague, overbroad and discriminatory on its face, and as construed and applied to the individual speech of Mr. Gilles, in violation of equal protection under the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff James G. Gilles respectfully prays for relief in that this Court:

A. Assume jurisdiction over this action;

B. Enter a judgment and decree declaring that the "Sales and/or Solicitation Policy" of Vincennes University, to the extent this policy acts to ban Mr. Gilles' speech on open areas of the campus of Vincennes University, is unconstitutional on its face, and as applied to Mr. Gilles, because it violates rights of freedom to speech, free exercise of religion, due process, and equal protection, all guaranteed to Mr. Gilles by the United States Constitution and operation of federal laws;

C. Enter a preliminary and permanent injunction enjoining Defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from enforcing or applying the "Sales and/or Solicitation Policy" of Vincennes University so as to ban Mr. Gilles from speaking on open public areas on the campus of Vincennes University;

D. Award Plaintiff James G. Gilles an award of actual and/or nominal damages in an amount deemed appropriate by this Court;

E. Grant to Plaintiff James G. Gilles an award for his costs for litigation, including reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 1988; and

F. Grant such other and further relief as appears to this Court to be equitable and just.

Respectfully submitted,

BY: /s/ Nathan W. Kellum
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VERIFICATION OF COMPLAINT

I, JAMES G. GILLES, a citizen of the United States, and a resident of Kentucky, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

Date: April 1, 2004.

/s/James G. Gilles
JAMES G. GILLES

Sworn to and subscribed before me this the 1 day of April, 2004.

/s/Sharon Oliver
NOTARY PUBLIC

My Commission expires:

[Notary Public, Kentucky State At Large]
My Commission expires February 27, 2007

No. 06-1617

IN THE

Supreme Court of the United States

JAMES G. GILLES,

Petitioner,

v.

BRYAN K. BLANCHARD, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioner presented compelling reasons to grant the Petition when this Court has provided clear guidance on the forum classification analysis of public property and the circuits have consistently classified property based on the characteristics of the property?

II. Whether Petitioner presented compelling reasons to grant the Petition when the Seventh Circuit held that uninvited persons had not been permitted to use the library lawn for public speaking, that no forum had been opened, and that the University's solicitation policy was therefore not germane to deciding the case?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding are Petitioner, James G. Gilles, and Respondents, Bryan K. Blanchard, in his official capacity of President of Vincennes University, and John Livers, individually and in his official capacity as Dean of Students for Vincennes University. The Respondents are natural persons. Vincennes University is a public, state supported university created by the Indiana State Legislature. *See* Ind. Code § 23-13-18-1, *et seq.*

TABLE OF CONTENTS

Page

Questions Presented i

Parties to the Proceeding and Rule 29.6 Statement ... ii

Table of Contents iii

Table of Cited Authorities v

Statement of the Case 1

I. Statement of Facts 1

II. Course of Proceedings 2

Reasons for Denying the Petition 6

I. This Court has provided clear guidance regarding the application of forum analysis to public properties and there is no conflict among the Circuit Courts regarding the application of forum analysis to open areas on public university campuses. 6

A. The Seventh Circuit conducted forum analysis. 6

B. The Seventh Circuit followed this Court's clear guidance regarding the application of forum analysis principles to open areas on public university campuses. 8

Contents

Page

C. No Circuit Court has held that an open area located within a public university campus is a traditional public forum. . . . 11

D. The Seventh Circuit's decision does not conflict with decisions of this Court. . . 15

II. The solicitation policy does not permit discretion related to speech on the library lawn. 17

Conclusion 20

TABLE OF CITED AUTHORITIES

Page

Cases:

ACLU Student Chapter Univ. of Md., College Park v. Mote, 321 F. Supp. 2d 670 (D. Md. 2004) 12

ACLU of Nevada v. City of Las Vegas, 333 F.3d 1092 (9th Cir. 2003) 6, 7

Adderly v. Florida, 385 U.S. 39 (1966) 10, 11, 16

Alabama Student Party v. Student Gov't. Ass'n., 867 F.2d 1344 (11th Cir. 1989) 10, 11

American Civil Liberties Union v. Mote, 423 F.3d 438 (4th Cir. 2005) 5, 6, 11, 13

Arkansas Educ. TV Comm'n. v. Forbes, 523 U.S. 666 (1998) 3, 8, 11

Atlanta Journal and Constitution v. City of Atlanta Dep't. of Aviation, 322 F.3d 1298 (11th Cir. 2003) 19

Bowman v. White, 444 F.3d 967 (8th Cir. 2006) 9, 11, 12, 13, 14

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Page

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Healy v. James, 408 U.S. 169 (U.S. 1972) 9

Int'l. Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992) 11

Justice for All v. Faulkner, 410 F.3d 760 (5th Cir. 2005) 11, 14

Cited Authorities

Page

Lakewood v. Plain Dealer Publ'g. Co.,
486 U.S. 750 (1988) 17, 19

Lederman v. United States,
291 F.3d 36 (D.C. Cir. 2002) 6, 7

Lewis v. Wilson,
253 F.3d 1077 (8th Cir. 2001) 19

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47 U.S. 551 (1972) 16

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424 U.S. 569 (1998) 16

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460 U.S. 37 (1983) 3, 8, 17

Ridley v. Massachusetts Bay Transp. Auth.,
390 F.3d 65 (1st Cir. 2004) 19

Rosenburger v. Rector & Visitors of the Univ. of Virginia, 515 U.S. 819 (1995) 5

United States v. Grace,
461 U.S. 171 (1983) 10, 11, 12, 13, 15

United States v. Kokinda,
497 U.S. 720 (1990) 10, 11

Cited Authorities

Page

United States v. American Library Ass'n. Inc.,
539 U.S. 194 (2003) 16

U.S. Postal Service v.
Council of Greenburg Civic Assns.,
453 U.S. 114 (1981) 17

Widmar v. Vincent,
454 U.S. 263 (1981) .....*passim*

Statute:

Ind. Code § 23-13-18-1, *et seq.* ii

STATEMENT OF THE CASE

I. Statement of Facts

Vincennes University is a public institution with 5,000 students at its main campus in Vincennes, Indiana, a town of 18,000. (Pet. App. at 1a).[1] James G. Gilles ("Gilles") is an itinerant preacher who came to the University campus, uninvited, and attempted to preach on a lawn in the middle of campus next to the library. (Pet. App. at 1a-4a). The library

---

1. Petitioner provides this Court with extensive "facts" in his Statement of the Case. Many of the facts provided are immaterial to the consideration of the questions presented for review and other facts are misstated. Gilles fails to point out in his Statement of Facts that the Seventh Circuit determined all of the speech activities by outside groups and individuals, except that of the Duncans in 1998, were by invitation from members of the University community. (Pet. App. at 9a). The claim Gilles was forced to speak on the brick walkway in front of the Student Union rather than the library lawn because Livers declared his speech to be solicitation is a misstatement as the library lawn was never opened as a forum to him as discussed by the Seventh Circuit and in the body of this Response. Consequently, whether Gilles' speech was classified as solicitation or not, it was not permitted on the library lawn. The claim by Gilles that he spoke on the library lawn in 2001 without interruption is a misstatement as he was asked to leave. (Pet. App. at 2a). The claim that other speakers whose speech falls within the policy's definition of "solicitation" are permitted to speak places other than the brick walkway is a misstatement as it fails to recognize that all such persons are members of the campus community or their invitees. The claims that Gilles did not try to entice anyone to action and that the designated area is not suitable for Gilles' expressive activity are argumentative. Respondents have limited their Statement of Facts to those that are material in light of the Seventh Circuit's decision. Respondent's Statement of Facts relies upon the District Court and the Seventh Circuit's recitation of facts.

lawn is not contingent to any public street or sidewalk. (Pet. App. at 18a). Gilles was told he could preach only on a brick walkway in front of the Student Union. (Pet. App. at 3a-4a). Gilles preached on the brick walkway, but he found it not to his liking and filed suit. (Pet. App. at 4a, 15a).

The University Solicitation Policy limited solicitation to a brick walkway in front of the Student Union. (Pet. App. at 3a). Uninvited outsiders are permitted to solicit only on the student union walkway. (Pet. App. at 15a). In contrast, outside speakers invited by members of the university community may use university facilities including the library lawn. (Pet. App. at 10a-11a).

Gilles failed to present evidence that the library lawn has been traditionally devoted to or set aside for expressive use by the general public or otherwise purposely dedicated for such purposes. (Pet. App. at 9a-10a; 18a.). The Seventh Circuit reviewed Gilles' evidence regarding prior use of the library lawn and found that all the expressive activities by outsiders that had taken place on campus were conducted at the invitation of a member of the Vincennes University community except for one occurrence in 1998. (Pet. App. at 9a-11a).

II. Course of Proceedings

The District Court entered summary judgment in favor of the Respondents and against the Petitioner. (Pet. App. at 14a). The District Court first noted that a determination had to be made regarding the nature of Gilles' preferred venue as that determination determined the applicable level of scrutiny. (Pet. App. at 17a-18a). The District Court reviewed the three main types of forums identified by this Court being the

traditional public forum, the designated public forum, and the non-public forum. (Pet. App. at 18a) (citing *Arkansas Educ. TV Comm'n. v. Forbes*, 523 U.S. 666, 677 (1998)). Next, the District Court explained that "traditional public fora are defined by the objective characteristics of the property, such as whether 'by long traditional or by government fiat,' the property has been 'devoted to assembly and debate,'" and further explained that designated public fora are created "by purposeful government action to open the area for expressive activity." (Pet. App. at 18a) (quoting *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 45 (1983)).

After this review, the District Court found that there was no evidence that the library lawn has "by long tradition or fiat been devoted to or set aside for expressive use by the general public," and it further found that there was no evidence Vincennes University purposely dedicated the area for expressive use by the general public. (*Id.*). As a result, the district court concluded that the subject area was not a public space "as it relates to Gilles, an outsider to the campus and its community." (*Id.*).

Given its forum determination, the District Court proceeded to analyze the solicitation policy pursuant to the non-public forum standard and concluded that the policy was viewpoint neutral, reasonable, and tailored to accomplish the University's educational mission. (Pet. App. at 19a-20a) (citing *Perry*, 460 U.S. at 46 (1983)). Notably, as discussed below, the District Court quoted *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981) just like nearly all, if not all, courts that have determined the forum classification of an area on a public university campus. The District Court also pointed out that the policy "does not prohibit any speech at all but instead merely invites all to whom it applied to solicit in the same designated area." (Pet. App. at 19a).

The District Court indicated that "it is difficult to accept Gilles' insistence that the Policy does not apply to him given that the circumstances of his visit and his stated purpose are to speak to students on moral topics and behaviors with the hope that they will embrace his religious faith." (Pet. App. at 19a). The District Court specifically considered Gilles' "due process concerns" and found that the Policy was "neither vague nor ambiguous." (Pet. App. at 20a n.1). The District Court further found that the Policy did not vest the Dean of Students with any discretion but simply required him to approve the date and time for the solicitation. (See *id.*).

Gilles appealed the District Court's entry of summary judgment, and the United States Court of Appeals for the Seventh Circuit affirmed the District Court. (Pet. App. at 1a-13a). The Seventh Circuit clearly identified the library lawn as a non-public forum as to Gilles, comparing it to the large auditorium at the Justice Department in Washington. (Pet. App. at 5a). In fact, nearly the entire opinion sought to determine whether the University had opened the library lawn to expression by uninvited visitors to the University. (Pet. App. at 6a-11a). The Seventh Circuit ultimately acknowledged the library lawn was a "limited designated public forum," open to expression to those in the University community and to those invited by the University community, but indicated that explicitly holding as such was unnecessary. (Pet. App. at 11a-12a).

The Seventh Circuit found that no forum had been opened because there was no evidence uninvited outsiders had been permitted to use the lawn. (Pet. App. at 8a-9a). Given this finding, the university could not have intended for the solicitation policy to open the library lawn to all outsiders who were not soliciting. (Pet. App. at 7a-9a). The

fact that the campus is not fenced and that outsiders are not forbidden to stroll on the lawn did not serve to open a forum as these persons were simply authorized to unobtrusively use the property as a short cut or other pathway and are "classic licensees." (*Id.*). Since no forum had been opened, the University was free to bar access to the lawn to outsiders just as the university could bar outsiders from other portions of its property as "[t]he government 'no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated,' (*Greer v. Spock*, 424 U.S. 828, 836 (1976)," (Pet. App. at 5a) (quoting *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

Importantly, just like the District Court, the Seventh Circuit noted that courts reject the proposition "that a campus must make all of its facilities equally available to students and non-students alike, or that a university must grant free access to all of its grounds or buildings." (*Id.*) (quoting *Widmar*, 454 U.S. at 268 n.5). The Seventh Circuit acknowledged that a university could not engage in viewpoint discrimination and open its spaces to be used by some outsiders but exclude others because it disapproves of their message, but it explained that a university can use neutral criteria such as that outsiders must be invited to speak on the campus by a faculty member or a student group. (Pet. App. at 6a) (citing *Rosenburger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828-830 (1995); *American Civil Liberties Union v. Mote*, 423 F.3d 438, 444 (4th Cir. 2005)). The Seventh Circuit noted that the difference between invited and uninvited visitors is fundamental to a system of property rights and that the invitation of other civilian speakers and entertainment to Fort Dix did not convert Fort Dix into a public forum or confer upon political candidates the constitutional right to conduct campaigns there. (*Id.*) (quoting *Greer*, 424 at 838 n.10 (1976).

In conclusion, the Seventh Circuit found that the limits Vincennes University placed on the use of the library lawn "are consistent with limiting University facilities to activities that further the interest of the University community" and as a result "[t]he limits are constitutional." (Pet. App. at 11a).

REASONS FOR DENYING THE PETITION

I. This Court has provided clear guidance regarding the application of forum analysis to public properties and there is no conflict among the Circuit Courts regarding the application of forum analysis to open areas on public university campuses.

A. The Seventh Circuit conducted forum analysis.

The Petitioner strains to show a conflict between the Seventh Circuit's decision below and decisions from other circuits. In doing so, the Petitioner cites to various cases discussing the factors to be considered in performing forum analysis and implies that just because the Seventh Circuit in this case and the Fourth Circuit in *Mote*, 423 F.3d at 444, determined that an open area on a public university campus was a non-public forum with respect to outsiders that these circuits somehow failed to consider the property's physical and objective characteristics. (Pet. App. at 13a) (citing *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1099 (9th Cir. 2003); *First Unitarian Church v. Salt Lake City*, 308 F.3d 1114, 1125-26 (10th Cir. 2002); and *Lederman v. United States*, 291 F.3d 36, 41-44 (D.C. Cir. 2002)). In effect, the Petitioner is arguing that the Seventh Circuit could not have considered the objective characteristics of the property since the conclusion reached was different than the Petitioner wanted.

In fact, the Seventh Circuit's decision was based entirely on forum analysis and its determination that the library lawn is part of a university campus which has not been opened for speech activities by non-members of the campus community. (Pet. App. at 5a, 9a-11a). The Seventh Circuit in fact considered "(1) the actual use and purposes of the property . . . , (2) the area's physical characteristics, including its location and the existence of clear boundaries delimiting the area . . . , and (3) traditional or historic use of both the property in question and other similar properties." *City of Las Vegas*, 333 F.3d at 1100-1101.

The cases cited by Gilles are clearly distinguishable on their facts. *First Unitarian Church*, 308 F.3d at 1126, and *City of Las Vegas*, 333 F.3d at 1102, dealt with government properties constituting public thoroughfares, and *Lederman*, 291 F.3d at 41-42, dealt with a sidewalk located on the grounds of the U.S. Capitol which are a traditional public forum as a seat of government. When the classification of open areas on public university campuses is examined, it becomes completely clear that this Court has provided clear guidance and that there is no conflict among the circuits.[2]

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2. In a footnote to the Petition, the Petitioner claims that the Seventh Circuit refused to consider the particular access sought by the speaker. (Pet. p. 12 n.4). The Seventh Circuit certainly made no mistake about where Gilles wanted to speak. It clearly discussed the library lawn rather than other parts of the campus. The Seventh Circuit did not discuss the classification of all portions of the campus as to all persons as implied by Gilles. It simply determined that the library lawn was a non-public forum as to Gilles.

B. The Seventh Circuit followed this Court's clear guidance regarding the application of forum analysis principles to open areas on public university campuses.

This Court has provided extensive guidance on the forum classification of public property for First Amendment purposes. *See Arkansas Educ. Television Comm'n. v. Forbes*, 523 U.S. 666, 677 (1998); *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 802, 806 (1985); *Perry Educ. Ass'n. v. Perry Local Educators Ass'n.*, 460 U.S. 37, 45-46 (1983); *e.g.* Certainly, this Court cannot provide specific guidance with respect to each unique piece of public property. The Seventh Circuit's decision in this case does not conflict with the guidance of this Court. Throughout this case and in his Petition, Gilles has continually refused to acknowledge that a university campus is objectively different and serves a different purpose than a public sidewalk or a public park. In contrast, this Court has recognized the unique characteristics of a university campus stating as follows:

> A university differs in significant respects from public forums such as streets or parks or even municipal theaters. A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and non-students alike, or that a university must grant free access to all of its grounds or buildings.

Widmar, 454 U.S. at 267 n.5. Even with respect to students and members of the campus community, *Widmar* goes on to

affirm the validity of cases such as *Healy v. James*, 408 U.S. 169, 188-189 (U.S. 1972), "that recognize a university's right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education." *Widmar*, 454 U.S. at 277. As a result, a university can impose "reasonable regulations compatible with [its] mission" of education such as denying access to non-students. *Id.* at 267 n.5.

Gilles wants to explain away *Widmar* by focusing on the last sentence in footnote 5 and the use of the word "all" claiming that this Court implicitly recognized Gilles' right to have access to at least "some" university property. Vincennes University in fact did permit Gilles access to some of its property as it permitted Gilles to preach on the brick walkway in front of the Student Union where he would encounter a steady stream of students. (Pet. App. at 3a-4a, 7a). Nevertheless, the clear meaning of the last sentence in footnote 5 is simply that a university is entitled to reasonably control its property. The last sentence in footnote 5 does not impact the clear indication that university property is to be treated differently than streets or parks.

The Circuit Courts have not misunderstood the clear direction of *Widmar* as none has held that an open area on a university campus is a traditional public forum when that area can be distinguished from a municipal sidewalk. *See* (Pet. App. at 5a) (quoting *Widmar*, 454 U.S. at 268 n.5); *Mote*, 423 F.3d at 443 (quoting *Widmar*, 454 U.S. at 267 n.5 and recognizing that "a university differs in significant respects from public forums such as streets or parks or even municipal theaters"); *Bowman v. White*, 444 F.3d 967, 978 (8th Cir. 2006) (quoting *Widmar*, 454 U.S. at 268 n.5 and recognizing that "[a] university differs in significant respects from public forums such as streets or

parks or even municipal theaters."); *Alabama Student Party v. Student Gov't. Ass'n.*, 867 F.2d 1344, 1354 n.5 (11th Cir. 1989) (Tjoflat, J., dissenting) (quoting *Widmar*, 454 U.S. at 268 n.5 and discussing footnote 5 in depth after a determination that the campus fell within the "limited public forum" category of government property); *Hayes County Guardian v. Supple*, 969 F.2d 111, 116-117 (5th Cir. 1992), *cert denied*, 506 U.S. 1087 (1993) (quoting *Widmar*, 454 U.S. at 267 n.5 and holding the that subject areas were designated public fora for the speech of students).

Widmar's direction that the open areas of university campuses are not traditional public forums is consistent with this Court's prior decisions. In *Greer v. Spock*, 424 U.S. 828, 836-838, 838 n.10 (1976), this Court held that Fort Dix did not become a public forum because the public was permitted to freely visit Fort Dix and civilian speakers and entertainers had been invited to appear at Fort Dix.[3] Also, in *Adderly v. Florida*, 385 U.S. 39, 47 (1966) this Court held that the open grounds surrounding a jail were not a public forum.

Subsequent opinions of this Court reinforce *Widmar*. *United States v. Grace*, 461 U.S. 171, 180 (1983), instructs that streets and sidewalks located within "some special type of enclave" such as a university are not traditional public forums. Justice Kennedy's controlling concurrence in *United States v. Kokinda*, 497 U.S. 720, 730, 738 (1990), does not call *Widmar* into question. His concurrence held that a sidewalk leading to the entrance of a post office was "more than a non-public forum" as a result of "the wide range of

3. Similarly, as the Seventh Circuit recognized, the library lawn did not become a public forum because the public was allowed to visit or because speakers and entertainers were invited by members of the campus community.

activity" that the government had permitted to take place on the sidewalk as individuals and groups had been permitted to "leaflet, speak, and picket" on the postal premises. Gilles' claim that *Kokinda* held that the sidewalk was a traditional public forum is simply incorrect. *Kokinda* does not conflict with the decision of the Seventh Circuit below as there was no evidence of customary use of the library lawn by the general public for First Amendment activities.

Finally, this Court "has rejected the view that traditional public forum status extends beyond its historic confines." *Forbes*, 523 U.S. at 678 (citing *Int'l. Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 680-681 (1992). Taken together, *Widmar*, *Greer*, *Adderly*, *Grace*, *Kokinda*, and *Forbes* conclusively establish that the open areas of a public university are not traditional public fora.

C. No Circuit Court has held that an open area located within a public university campus is a traditional public forum.

All circuits that have considered the forum classification of an open area on a public university campus, which can be distinguished from a municipal sidewalk, have determined the area was either a designated public forum or a non-public forum depending on the relevant facts regarding past access provided to the property and the identity of the speaker. *See Bowman*, 444 F.3d at 977-980; *Hayes County*, 969 F.2d at 118, *Mote*, 423 F.3d at 444; *Alabama Student Party*, 867 F.2d at 1354; *Justice for All v. Faulkner*, 410 F.3d 760, 767-770 (5th Cir. 2005).

The only case discussed in detail by the Petitioner is *Bowman*, 444 F.3d at 978-980. In that case, the plaintiff was

represented by the same counsel as Gilles in this case. *See id.* at 972. In *Bowman*, the Eighth Circuit held that three open areas on the campus of the University of Arkansas were designated public forums as a result of how the university had treated the areas especially the fact that the policy governing the use of university outdoor space permitted speech by both university and non-university entities. *See id.* at 978-980. The policy itself offered strong evidence that the university intentionally opened the area as a designated public forum. *See id.* at 978.

Importantly, prior to reaching its conclusion, the Eighth Circuit stated that even though the University "'possesses many of the characteristics of a public forum' such as open sidewalks, '[it] differs in significant respects from public forums such as streets or parks or even municipal theaters.'" *Id.*. (quoting *Widmar*, 454 U.S. at 268 n.5). The Eighth Circuit indicated that the significant difference between a traditional public forum and a university campus results from the fact that "a university's purpose, its traditional use, and the government's intent with respect to the property is quite different because a university's function is not to provide a forum for all persons to "talk about all topics at all times." *Id.* Instead, a university's mission is education and to act as a "'special type of enclave' devoted to higher education." *Id.* (quoting *ACLU Student Chapter Univ. of Md., College Park v. Mote*, 321 F. Supp. 2d 670, 679 (D. Md. 2004) which was quoting *Grace*, 461 U.S. at 180; citing *Widmar*, 454 U.S. at 268 n.5). As a result, open areas "that might otherwise be traditional public fora" are not when they are within the boundaries of a university's campus. *Id.*

As a result, the "particularly striking," (Pet. at p. 16), conflict between the decision of the Seventh Circuit in this case and that of the Eighth Circuit in *Bowman* is actually non-existent. In fact, the cases are strikingly consistent except for the fact that in *Bowman* the University of Arkansas had intentionally opened the subject areas for public discourse. Therefore, the Seventh Circuit did not in fact take "a divergent path." (Pet. at p. 16).[4]

Similarly to *Bowman*, the Fourth Circuit in *Mote*, 423 at 44, determined that the University of Maryland campus "is not akin to a public street, park or theater, but instead is an institute of higher learning that is devoted to its mission of public education." The mission of the university "necessarily focuses on the students and other members of the university community," so as a result, the campus has not "traditionally been open to the public at large, but instead has been a 'special type of enclave' that is devoted to higher education." *Id.* (quoting *Grace*, 461 U.S. at 180). *Mote* specifically noted that there was nothing in the record to indicate that prior to the implementation of the challenged policy which limited outside unsponsored persons and groups to two designated areas on campus that "the campus was anything but a non-public forum for members of the public not associated with the university." *Id.* at 444.

The Fifth Circuit, in *Hayes County*, 969 F.2d at 116, also consistently held that the outdoor grounds of the campus such as the sidewalks and plazas of Southwest Texas State

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4. The portion of the *Bowman* decision questioned by the Seventh Circuit was the holding that the university could not limit use of the campus by outsiders to five days once the university allowed anyone to use its outdoor spaces rather than the forum analysis itself. (Pet. App. at 7a).

University were designated public fora for the speech of university students. In that case, the university had adopted a specific policy opening the university grounds to both students and non-students alike. *See Hayes*, 969 F.2d at 117. As a result, Southwest Texas State University took action to create a designated public forum.[5]

In contrast to the universities in *Bowman* and *Hayes County*, Vincennes University did not open the library lawn to non-students who had not been invited by a member of the campus community. A designated forum is created "only by intentionally opening a non-traditional public forum for public discourse." *Forbes*, 523 U.S. at 677 (quoting *Cornelius*, 473 U.S. at 802). A designated public forum is not created through inaction or by permitting limited discourse. *See id.*

The only case which has determined that property of a public university was a traditional public forum is *Brister v. Faulkner*, 214 F.3d 675 (5th Cir. 2000), (*cert denied*, 531 U.S. 985 (2000). That case is clearly distinguishable as it dealt with university property adjacent to a city sidewalk and along a city street which is "a unique piece of university property that is, for all constitutional purposes, indistinguishable from the Austin city sidewalk." *Id.* at 683. *Brister* explained that "there is no indication or physical demarcation of the public

5. The Fifth Circuit reached a nearly identical holding in *Justice for All*, 410 F.3d at 767-770, where it held that the outdoor open areas of the University of Texas at Austin were a designated forum for student expression. In that case, the University had adopted "Institutional Rules" which evidenced clear intent to create such a forum. *See id.* at 770. Whether the University had opened its entire campus to "unfettered expression by the general public" was not before the Court. *Id.* at 767.

sidewalk, which is a public forum, and *the university grounds, which typically are not.*" *Id.* at 682 (emphasis added). The facts in *Brister* were quite similar to the facts presented in *Grace*, 461 U.S. 171 (1983), which dealt with sidewalks surrounding the grounds of this Court which were indistinguishable from the sidewalks of Washington, D.C., and *Brister* heavily relied on *Grace*. In contrast, the library lawn is in the middle of campus next to the university library and is not contingent to any public street or sidewalk. (Pet. App. at 2a, 18a).

As a result, there is uniformity in the treatment of open areas on university campuses by the Circuit Courts. No circuit has held that an open area of a campus distinguishable from a city sidewalk is a traditional public forum. The Circuit Courts have consistently applied the facts to the forum analysis principles provided by this Court to determine if a designated public forum has been opened and if so for whom. All circuits have classified open areas on university campuses as a general designated public forum, a limited public forum for student expression, or a non-public forum depending on the facts. This uniformity results from the clear guidance of this Court.

D. The Seventh Circuit's decision does not conflict with decisions of this Court.

Gilles attempts to manufacture several conflicts between the Seventh Circuit's decision and decisions of this Court, but none in fact exist. Gilles suggests that the Seventh Circuit entirely disregarded forum analysis and applied private property rules in its place. The Seventh Circuit's decision is actually based entirely on forum analysis and holds that the library lawn, on the facts presented, is not a traditional public forum or a designed public forum for use by the general

public. Once that determination was made, the Seventh Circuit simply pointed out this Court's repeated indication that the government "no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." (Pet. App. at 5a), (quoting *Greer*, 424 U.S. at 836; *Cornelius*, 473 U.S. at 800; *Adderly*, 385 U.S. at 47). The Seventh Circuit certainly does not suggest that the government can bar public speaking from traditional public forums as suggested by Gilles. (Pet. at p. 20).[6] Regardless, this Court has indicated that forum principles "are out of place" in certain circumstances which involve neither a "traditional" nor a "designated" public forum. *United States v. American Library Ass'n. Inc.*, 539 U.S. 194, 205 (2003); *Accord Nat'l. Endowment for the Arts v. Finley*, 424 U.S. 569 (1998).

Gilles incorrectly argues "the rules for private property cannot be applied to public property." (Pet. at p. 19) (citing *Lloyd Corp. v. Tanner*, 47 U.S. 551, 563 (1972)). *Lloyd Corp.* stands for no such proposition and simply held that First Amendment rights did not extend to private property open to the public. *See id.* at 570. Countless if not all rules for private property apply to public property which has not been opened as a public forum, and many of the rules for private property apply to all public property. Gilles' proposition would effectively mean that public property could not be controlled, developed, or transferred.

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6. The Seventh Circuit also did not suggest that the Constitution does not fully apply to public universities as suggested by Gilles. (Pet. p. 10 n.3). Rather, the Seventh Circuit only noted that the Constitution did not require public universities to bear extravagant burdens (not required of private universities) *just because* they have taxpayer support as a way of evening things out. (Pet. App. at 5a). (emphasis added).

Because Vincennes University's solicitation policy did not open the library lawn as a forum and because Gilles "failed to show that any uninvited outsider has ever been permitted to use the lawn for any purpose," (Pet. App. at 9a), the Seventh Circuit considered common law property rules. As previously discussed, a public forum cannot be created by "inaction or by permitting limited discourse, but only by intentionally opening a non-traditional forum for public discourse." *Cornelius*, 473 U.S. at 802 (citing *Perry*, 460 U.S. at 46). Gilles has no inherent First Amendment Right to engage in speech activities on the library lawn as "the First Amendment does not guarantee access to property simply because it is owned and controlled by the government." *Cornelius*, 473 U.S. at 803 (quoting *U.S. Postal Service v. Council of Greenburg Civic Assns.*, 453 U.S. 114, 129 (1981)). Certainly, government property which is a non-public forum does not become a public forum open to all expressive conduct simply because of the lack of a written policy.

II. The solicitation policy does not permit discretion related to speech on the library lawn.

Gilles devotes a significant portion of his Petition to discussion of the "unbridled discretion" doctrine. (Pet. at p. 20-29). This term was used in *Lakewood v. Plain Dealer Publ'g. Co.*, 486 U.S. 750, 763 (1988), to describe the discretion given to a government official who decides "who may speak and who may not" based on content or viewpoint without "standards governing the exercise of discretion." *Id.* at 763-764. Importantly, in entering into this discussion *Lakewood* was discussing "a law or policy permitting communication in a certain manner for some but not for others." *Id.* at 763. In other words, once the government, by

law or policy, opens a public forum to communication, government officials cannot have unbridled discretion in determining who may speak and who may not.

The Seventh Circuit determined that the solicitation policy did not in fact apply to speech on the library lawn. Because no uninvited outsiders had been permitted to speak on the library lawn and no forum had been opened, there was no discretion to be exercised. The Seventh Circuit determined that the only relevance of the solicitation policy to this case was whether by promulgating the policy, the university intended to throw open the library lawn to all uninvited outsiders who were not soliciting. (Pet. App. at 7a-8a). The solicitation policy became irrelevant when the Seventh Circuit, using the required forum analysis, determined that the library lawn had not been opened to uninvited outsiders. The solicitation policy certainly "opened" the designated area in front of the Student Union to solicitation by the general public. If Gilles had been denied access to the designated area because his speech was determined not to be solicitation, the language of the policy would be critical, but Gilles brought suit claiming a right to speak on the library lawn rather than claiming his rights were violated in some way with respect to the designated area.

As a result, the Seventh Circuit did not require Gilles to show "further proof of viewpoint discrimination" as he claims. (Pet. at p. 23). Rather, the Seventh Circuit required Gilles to provide some evidence that the library lawn had been opened to uninvited outsiders. (Pet. App. at 9a). The Seventh Circuit did not permit a vague policy to be bolstered by unwritten terms and an assumption of good faith by public officials. Rather, the Seventh Circuit found that Vincennes University took no action to open the library lawn to

expression by uninvited members of the general public and that, as a result, Gilles, just like other uninvited members of the general public, was not entitled to speak on the library lawn.

Accordingly, the unbridled discretion doctrine is completely inapplicable to this case. Nevertheless the conflict between the circuits suggested by Gilles is not present. Some circuit courts have applied the doctrine to strike down laws or policies applicable to non-public fora. *See Child Evangelism Fellowship of MD v. Montgomery County Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006); *Atlanta Journal and Constitution v. City of Atlanta Dep't. of Aviation*, 322 F.3d 1298, 1310-11 (11th Cir. 2003); and *Lewis v. Wilson*, 253 F.3d 1077, 1079-80 (8th Cir. 2001). But, the lack of the doctrine's application by the Federal Circuit in *Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309, 1324 (1st Cir. 2004), *cert. denied*, 537 U.S. 947 (2002), and the First Circuit in *Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 94-95 (Fed. Cir. 2002), does not create a split in the circuits as these courts did not indicate that the doctrine is always inapplicable in a non-public forum. A closer analysis shows that the doctrine was not applied in these cases because the "threats to expression identified by *Lakewood*" were not present. *Griffin*, 288 F.3d at 1324; *see Ridley*, 390 F.3d at 94. In fact, *Child Evangelism*, 457 F.3d at 377, approvingly quotes *Ridley*, 390 F.3d at 94-95 and approvingly cites to *Griffin*, 288 F.3d at 1324. As a result, there is no "obvious circuit split" as claimed by Gilles.

Nevertheless, the simple fact is that the solicitation policy was not "a law or policy permitting communication" on the library lawn. *Lakewood*, 486 U.S. at 763.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

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JAMES G. GILLES,
Petitioner,

vs.

BRYAN K. BLANCHARD, ET AL.,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. SEVENTH CIRCUIT DID NOT APPLY FORUM ANALYSIS BUT TREATED PUBLIC PROPERTY LIKE PRIVATE PROPERTY 4

II. CONTRARY TO THIS COURT AND OTHER CIRCUITS, SEVENTH CIRCUIT DETERMINES THAT UNIVERSITY PROPERTY CAN NEVER BE PUBLIC FORA 7

III. UNBRIDLED DISCRETION IS UNCONSTITUTIONAL IRRESPECTIVE OF HOW THE FORUM IS DEPICTED 9

CONCLUSION 10

TABLE OF AUTHORITIES

CASES

ACLU of Nevada v. City of Las Vegas,
333 F. 3d 1092 (9th Cir. 2003).....3, 4

Bowman v. White,
444 F. 3d 967 (8th Cir. 2006).....8

Child Evangelism Fellowship of Md. v. Montgomery County Pub. Sch.,
457 F.3d 376 (4th Cir. 2006).....9

City of Lakewood v. Plain Dealer Publ'g Co.,
486 U.S. 750 (1988).....6

Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.,
473 U.S. 788 (1985).....4

First Unitarian Church v. Salt Lake City,
308 F.3d 1114 (10th Cir. 2002).....4

Gilles v. Blanchard,
477 F.3d 466 (7th Cir. 2007)..... *passim*

Griffin v. Secretary of Veterans Affairs,
288 F.3d 1309 (Fed. Cir. 2002).....9, 10

Grutter v. Bollinger,
539 U.S. 306 (2003) 1

Healy v. James,
408 U.S. 169 (1972) 1

Hill v. Colorado,
530 U.S. 703 (2000) 2

Initiative and Referendum Inst. v. United States Postal Serv.,
417 F.3d 1299 (D.C.Cir.2005) 2

Justice for All v. Faulkner,
410 F.3d 760 (5th Cir. 2005) 8

Lederman v. United States,
291 F. 3d 36 (D.C. Cir. 2002) 3

Regents of Univ. of Cal. v. Bakke,
438 U.S. 265 (1978) 1

Ridley v. Massachusetts Bay Transp. Auth.,
390 F.3d 65 (1st Cir. 2004) 9, 10

Rosenberger v. Rector & Visitors of Univ. of Va.,
515 U.S. 819 (1995) 1

United States v. Kokinda,
497 U.S. 720 (1990) 2

Widmar v. Vincent,
454 U.S. 263 (1981) 7

OTHER AUTHORITIES

Marie A. Failinger, *New Wine, New Bottles: Private Property Metaphors and Public Forum Speech,*
71 ST. JOHN'S L. REV. 217 (1997) 7

Mark Cordes, *Property and the First Amendment,*
31 U. RICH. L. REV. 1 (1997) 2

ARGUMENT

Robust debate is no where more important than on a public university campus. Universities originated as breeding grounds for discussing new ideas. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 836 (1995). In our constitutional tradition, these places of higher learning occupy a "special niche" because of their association with free speech and free thought. *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003). This Court has often noted the protection afforded speech on college campuses because of "the important and substantial purposes of the University, which seeks to facilitate a wide range of speech." *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 237 (2000).

Therefore, free speech is not just compatible with university goals, it is vital to university purpose. Indeed, "[i]t is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) (citation omitted). A time-honored notion, "free speech and creative inquiry" are essential to university campuses because these areas are "vital centers for the Nation's intellectual life." *Rosenberger*, 515 U.S at 836. And thus, the "college classroom *with its surrounding environs* is peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972) (emphasis added).

To preserve the important function of speech on public property, including spots on public university campuses, courts test any restriction on expression according to a doctrine known as forum analysis. Under forum analysis, the level of scrutiny used to evaluate speech regulations turns on whether the forum is classified as public or nonpublic.

Consequently, the methodology employed to determine the status of the forum is critical.

Streets, sidewalks, parks, pedestrian malls, and other open public ways are easy enough. They have historically been considered "the 'quintessential' public forums for speech." *Hill v. Colorado*, 530 U.S. 703, 715 (2000). It is not as clear, though, whether all streets, sidewalks, parks, pedestrian malls, and other public ways qualify as public fora, especially when found on property of government proprietor. This Court addressed the forum status of such areas nearly two decades ago in *United States v. Kokinda,* 497 U.S. 720 (1990). But as the last word, *Kokinda* provides little guidance because it was a plurality decision. *See Initiative and Referendum Inst. v. United States Postal Serv.,* 417 F.3d 1299, 1313 (D.C.Cir.2005) ("As the district court noted and the Postal Service agrees, the split nature of the decision in *Kokinda* provides no definitive guidance on the forum status of postal sidewalks.") (citation and quotation omitted); Mark Cordes, *Property and the First Amendment*, 31 U. RICH. L. REV. 1, 20 (1997) (opines that plurality in *Kokinda* lends uncertainty as to how far forum analysis can be pursued).

Given the uncertainty, a split has arisen among the circuit courts, which is exemplified with this petition. In *Gilles v. Blanchard,* 477 F.3d 466 (7th Cir. 2007), Court of Appeals for the Seventh Circuit emphasized government intent and virtually ignored the forum's objective characteristics in judging the speech restriction. *Id.* at 469-74. As a result, *Gilles* court treated public university property like private property and allowed university officials to enjoy the same discretion as private land owners to squelch speech. *Id.* at 472-73. If this methodology were applied universally, government proprietors would be able to discriminate against

disfavored speech on public property---regardless of its objective characteristics---just like private citizens can readily preclude disliked speech on their own private property.

The result makes little sense, as it eviscerates the very idea behind forum analysis (the preservation of public space for free speech) and supplies officials with uninhibited power to proscribe speech. This outcome is notably absurd within the confines of a public university, the place that is supposed to be the marketplace for ideas.

But *Gilles* only represents one side of the story. Other circuits contradict *Gilles* and look to objective characteristics over government intent in forum analysis. *E.g. ACLU of Nevada v. City of Las Vegas*, 333 F. 3d 1092, 1099 (9th Cir. 2003) (downtown pedestrian mall); *Lederman v. United States*, 291 F. 3d 36, 41-44 (D.C. Cir. 2002) (sidewalk facing Capitol building). This "objective" methodology adheres to the goal of forum analysis because it preserves some public property for speech and limits the control of government officials over speech. For this reason, the present circuit split over methodology cuts to the heart of forum analysis. No doubt, confusion over methodology will continue to cause inconsistent and even contradictory results about speech on public property. And, to be sure, if other circuits decide to use the same methodology as Seventh Circuit, free speech will have little to no security on any property owned by the government.

Respondents try to sidestep this conflict in an unavailing and disingenuous manner; they mischaracterize the facts and

ruling of *Gilles*.[1] Respondents' perverse version of *Gilles* aside, there exists a circuit split over forum analysis and unbridled discretion. And because of the differing approaches to this matter, university officials and speakers are left in a quandary, unsure of how to regulate or speak. The only way to resolve the dilemma is for this Court to step in and supply needed guidance on forum analysis, particularly, in regards to public universities and other public areas where government acts as a proprietor.

I. Seventh Circuit Did Not Apply Forum Analysis But Treated Public Property Like Private Property

In *Gilles*, Seventh Circuit refused to conduct forum analysis, and thereby, discarded precedents of this Court. *See e.g. Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985) (specifying need for forum analysis). At no time did *Gilles* ever classify the relevant forum as traditional, designated, or nonpublic forum. And this error was not just one of semantics. Seventh Circuit declined to analyze any of the factors used by other circuits to determine forum status. *Compare Gilles,* 477 F.3d at 470 (denying relevance of property's compatibility with speech) *with ACLU of Nevada*, 333 F.3d at 1099 and *First Unitarian Church v. Salt Lake City*, 308 F.3d 1114, 1125 (10th Cir. 2002) (analyzing characterizing factors about property such as property's physical characteristics and compatibility with speech). Rather than analyze the actual forum, *Gilles* court relied on economic principles totally foreign to forum analysis. 477 F.3d at 470 (hesitant to impose "extravagant

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[1] Far beyond zealous advocacy, Respondents endeavor to rewrite the *Gilles* opinion so as to avoid the conflict. The argument is pursued as though this Court will not actually read the *Gilles* opinion, but just blindly accept Respondents' description of it.

burdens on public universities that private universities do not bear" since "public and private universities compete with each other.").

Yet, according to Respondents, *Gilles* court did conduct forum analysis. For proof, Respondents do not reference anything in the *Gilles* opinion itself, but list factors used by the Ninth Circuit to determine forum status in *ACLU of Nevada*. (Respondents' brief, p. 7, citing 333 F.3d at 1100-01). It is telling that Respondents omit how the factors used in *ACLU of Nevada* were applied in *Gilles*. As a reading of the opinion reveals, *Gilles* court never used, applied, or even suggested the use of the factors employed in *ACLU of Nevada*.

In fact, the only time the *Gilles* court speaks to forum analysis is to criticize the doctrine. *Gilles* court comments on "[t]he difficulty with using the 'forum' template to resolve this case" and "doubt[s] the utility of multiplying categories in this fashion, thus adding epicycles to an already complex scheme and turning the search for sensible results into a classification game." 477 F.3d at 473-74. Seventh Circuit surmises that assessing the forum would result in an "unnecessary flourish." *Id.* at. 474. On Respondents' reading, the appellate court speaks out of both sides of its mouth, conducting forum analysis yet simultaneously lambasting the doctrine. This strained interpretation cannot be reconciled with the opinion.

Absent restraints from forum analysis, Seventh Circuit equates public property to private property. Citing two state cases about private property, the court presumes an implicit "norm" that bans any use of a freely accessible publicly-owned area, except as a short-cut. 477 F.3d at 472. This implicit "norm" is supposed to cure the unmistakable

vagueness found in the written solicitation policy enforced by Vincennes University ("VU"). But Seventh Circuit does not elaborate as to how this unwritten norm is consistent with the requirement that "the limits the [government] claims are implicit in its law be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770 (1988).

In defense of this reasoning, Respondents argue that "countless" private property rules apply to public property. (Respondents' brief, p. 16). While "countless" seems to be a bit of a stretch, perhaps, some private property rules do apply to public property. But this is not the point. The issue is whether expression protected by the First Amendment that takes place on government property resembling public park and sidewalk can be treated as if it was uttered in someone's living room.

Gilles's analogy of public property to private property is inept because the forum analysis mandated by this Court presupposes fundamental rights on public property that do not carry over to private property.[2] Though Seventh Circuit may consider free speech rights to be "extravagant burdens" for public university officials to bear in comparison to their private counter-parts, 477 F.3d at 473-74, this Court has consistently limited governmental encroachment on free expression on public property.

And it is this basic premise of *Gilles* —public property is

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[2] For example, even in a nonpublic forum, the government cannot retain unbridled discretion and cannot discriminate on the basis of viewpoint. In contrast, a private owner of property has every right to preclude any expression, for any reason, on his or her land.

just like private property---that is so dangerous. *See* Marie A. Failinger, *New Wine, New Bottles: Private Property Metaphors and Public Forum Speech*, 71 ST. JOHN'S L. REV. 217, 250 (1997) (noting dangers of analogizing public property to private property). If rules for private property apply equally to public property, then no city street, park or sidewalk would be safe for free expression. Thankfully, this Court treats public property remarkably different than private property, and so repudiates the core logic of *Gilles*.

II. Contrary to this Court and Other Circuits, Seventh Circuit Determines that University Property Can Never Be Public Fora

Respondents also attempt to avoid the conflict between the circuits on forum analysis by focusing on a particular phrase found in *Widmar v. Vincent*, 454 U.S. 263 (1981). According to Respondents, this Court in *Widmar*, via footnote 5, clarified once and for all that all university property is nonpublic fora and that university property can never be public fora. (Respondents' brief, pp. 8-10 citing 454 U.S. at 269 n. 5).

But this singular footnote cannot bear the interpretive weight Respondents wish to give it. At most, this Court, in *Widmar*, denied that a university must "make *all* of its facilities equally available to students and nonstudents alike, or that a university must grant free access to *all* of its grounds or buildings." 454 U.S. at 269 n. 5 (emphasis supplied). Respondents would have this Court forget the references to "all" in *Widmar*, and construe it so as to declare every parcel of university property as being nonpublic fora. However, precise wording from the opinion cannot be ignored. And that actual language does not label an entire campus as one type of forum. *See Bowman v. White*, 444 F.

3d 967, 987 (8th Cir. 2006) (Bye, J. concurring) ("The Court [in *Widmar*] in no way suggests, and perhaps with its use of the term 'all' implies the contrary, all streets, sidewalks and parks on a public university are non-traditional public fora").

Consistent with this Court's holding in *Widmar*, several circuits refuse to classify an entire university campus as one type of forum. *E.g. Bowman*, 444 F.3d at 976-77; *Justice for All v. Faulkner*, 410 F.3d 760, 766 (5th Cir. 2005). As these cases recognize, this Court has never ruled or implied that all university property must be nonpublic fora. Rather, a variety of fora exists on a public university campus, including traditional and designated public fora.

Notwithstanding, Respondents proclaim that all areas on public university campus are nonpublic fora *per se*. (Respondents' brief pp. 11-12). In so urging, they ignore or misconstrue the methodology used in the cases. In addition to misreading *Widmar*, Respondents say that there is no real conflict between *Bowman* and *Gilles*. This is an untenable assertion, considering the *Gilles* decision explicitly expresses doubt about "the soundness of the decision [in *Bowman*]." 477 F.3d at 471. And importantly, *Bowman* and *Gilles* used substantially different criteria to reach their respective results. While *Gilles* relied exclusively on government intent (as espoused in litigation), *id.* at 470, *Bowman* assessed a variety of objective factors, including property's traditional use and its objective use and purpose. 444 F.3d at 978.

Respondents also mischaracterize the language in *Bowman*. Quoting *Bowman*, Respondents argue "open areas 'that might otherwise be traditional public fora' <u>are not</u> when they are within the boundaries of a university's campus." (Respondents' brief, p. 12) (underlining supplied). In reality, the *Bowman* court ruled "open areas that might otherwise be

traditional public fora may be treated differently when they fall within the boundaries of the University's vast campus." *Bowman*, 444 F.3d at 978 (underlining supplied). A very different meaning than that portrayed by Respondents. This remark in *Bowman* underscores the Eighth Circuit position that university property is not nonpublic *per se* and refers to the inquiry of whether expression is compatible with the subject property. Upon consideration of accurate language of these opinions, Respondents are unable to negate the conflict between *Bowman* and *Gilles*. And this conflict just highlights the general confusion among the circuits as a whole over forum methodology.

III. Unbridled Discretion is Unconstitutional Irrespective of How the Forum is Depicted

Within the framework of forum analysis, courts also disagree on how much discretion to give to officials in regulating speech on nonpublic fora. While some circuits strictly ban unbridled discretion, other circuits allow for broad discretion, in nonpublic fora. *Compare Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir. 2002) and *Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 93 (1st Cir. 2004) *with Child Evangelism Fellowship of Md. v. Montgomery County Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006).

To minimize the import of this conflict, Respondents first argue that *Montgomery County* is compatible with *Griffin* and *Ridley* because *Montgomery County* cites *Griffin* and *Ridley*. (Respondents' brief, p. 19.) Of course, citing one proposition from a case does not eliminate expressed disagreement with the reasoning or result of that case. *Montgomery County* comes to a different result and applies the unbridled discretion doctrine much more stringently than

Griffin or *Ridley*. Thus, the conflict cannot be (legitimately) denied.

Second, Respondents argue that the unbridled discretion doctrine is irrelevant due to their curious assertion that the solicitation policy was not used to ban Gilles' speech. With this, as with other matters, Respondents take undue liberty with the record. As a matter of undisputed fact, VU considered Gilles' speech to be solicitation and silenced Gilles pursuant to its solicitation policy. App. 106a. The Seventh Circuit acknowledged the application of the policy to Gilles and ruled accordingly. 477 F.3d at 472 ("The application of the university's solicitation policy to Brother Jim [Gilles] brings him to the verge of victory.") Hence, the solicitation policy is quite pertinent and ought to be scrutinized for unbridled discretion. *Gilles* court correctly noted that this policy "is hopelessly vague and thus a supple weapon for excluding…those outsiders whose message the university disapproves of." *Id.* But the refusal to strike down this policy--despite the patent invalidity--is in direct conflict with how other courts, including this Court, deal with unbridled discretion.

CONCLUSION

Gilles requests this Court grant this Petition.

Respectfully submitted,

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